

Section 9

Procurement Regulations

Contents

| Section Number | Section Title |
|----------------|--|
| | Glossary |
| | Summary of Options Available for the Procurement Process |
| 1 | Introduction |
| 2 | Context |
| 3 | Before We Start |
| 4 | Commissioning the Procurement |
| 5 | How We Buy The Goods And Services We Need |
| 6 | Quotations Process |
| 7 | Tendering Process |
| 8 | Framework Agreements |
| 9 | Concession Contracts |
| 10 | Conditions Of Contract |
| 11 | Changes to Contracts |
| 12 | Exceptions From The Regulations |

Glossary of terms

| Term | Definition / Explanation |
|---|--|
| Chief Officer | This means all Members of Leadership Team |
| Central Digital Platform | This is the online central system provided by the Cabinet Office for the publication of notices, documents and other information in relation to the Procurement Act 2023. It is used by the public sector to advertise and bid for procurement opportunities. |
| Consortium | An association of several business organisations who are legally bound together to work towards a commonly held aim. Or, it can mean two or more economic operators. |
| Contract | Any agreement where we agree to carry out or to buy or sell any goods, work, services or utilities for payment or otherwise. |
| Contract Lots | A contract may be split into discrete aspects (lots) which tenderers may bid for separately or combined, as specified in the tender. |
| Crown Commercial Services | <p>This is the central procurement service run by HM Government for the public sector. The website address is ccs.cabinetoffice.gov.uk.</p> <p>This will allow you access to Framework Agreements, Catalogues, etc</p> |
| Electronic procurement and e-tendering | The use of bespoke procurement software products. E-tendering systems allow all aspects of the tendering process to be carried out electronically including the despatch of tender documents, receipt of and responding to clarification questions and return of completed tenders. You can take advantage of reduced minimum time periods for above-threshold procurements when you use electronic procurement. You can get advice and guidance on this from a procurement advisor. |

| Term | Definition / Explanation |
|--|---|
| Procurement Act | The Public Procurement Act 2023, and any regulations made thereunder, together with relevant EU directives, case law and guidance issued. |
| Framework agreement | An agreement or other arrangement which sets the terms (in particular the price and, where appropriate, quality) under which the provider will enter into one or more contracts or a series of contracts with us. This may also be referred to as a call-off contract, a continuous contract or a standing offer. |
| National Procurement Policy Statement | The statement published by the government in accordance with section 13 of the Procurement Act: https://assets.publishing.service.gov.uk/media/663c9bbd1834d96a0aa6d314/E03126162 - Un Act - National Procurement Policy Statement V2 Elay.pdf |
| Open procedure | This means an advert will be placed and the tender will be open to anyone who shows an interest. An open procedure is always a single stage procurement exercise. |
| Procurement Advisor | This will be the Head of Transformation and Assurance or staff from Staffordshire County Council or any other organisation providing professional support to the delivery of procurement exercises |
| Public organisation | Any organisation which may award a public contract under the Procurement Act. |
| Public services contract | One under which we employ a person or other legal entity to provide services. |
| Public Supply contract | A contract to buy goods (not land or the product of an activity); or hire goods, whether or not we install them. |
| Public Works Contract | A contract for carrying out work under which we employ a person or other legal entity to do the work. Works are defined as including: <ul style="list-style-type: none"> • building and civil engineering work; • installing, for example, heating and electrical equipment or ICT equipment; • carrying out work such as tiling and papering; and • maintaining buildings. |

| Term | Definition / Explanation |
|---------------------------|--|
| | <p>We may also treat the following activities as a contract for work:</p> <ul style="list-style-type: none"> • A contract where we employ a provider to act as our agent when letting works contracts. <p>An agreement where a developer constructs a building on their own land (according to our needs) and then transfers the land and structure to us at a later date.</p> |
| Signing a contract | <p>A contract includes arrangements for formally accepting a tender. Contracts can only be awarded and signed/sealed by Authorised Officers. A purchase order will in effect be the contract for lower value purchases and so the rules for signing a contract will apply. See 10.5 for more details</p> |
| Standstill period | <p>The period of time between giving notice of our plan to award the contract and the confirmation of the award of the contract which is needed under the Procurement Act. This gives unsuccessful companies the chance to ask for a debriefing and to challenge an award of a contract.</p> |
| Tendering | <p>A formal procedure for getting written offers (tenders) for supply.</p> |
| Third sector | <p>Non-governmental organisations that are driven by value and which mainly reinvest any profit to further social, environmental or cultural aims. The sector includes voluntary and community organisations, charities, social enterprises, faith groups, housing associations and co-operatives and mutuals.</p> |
| Value for money | <p>This is not the lowest price but the best combination of whole-life costs and quality to meet users' needs. You should always assess value for money over the whole life of the contract and you should take into account all costs and benefits to society as a whole including the environmental and social benefits and costs, not just those directly relevant to us. (OGC 2008).</p> |

Summary of Options Available for the Procurement Process

| Category | Value | Process |
|---------------------------------|---|--|
| Minimal value transactions | Up to £1,000 | No requirement to obtain written quotations but still have a duty to obtain value for money |
| Low Value transactions | From £1,000 up to £10,000 | Two written / evidenced quotations must be obtained. This can be done by undertaking price comparisons on websites e.g. for goods. |
| Intermediate Value Transactions | From £10,000 up to £30,000 | Three written quotations must be obtained. Alternatively an existing framework agreement can be used. |
| Medium Value Transactions | Over £30,000 and up to £60,000 | <p>Quotes obtained through formal process, where providers must comply with a specification. Alternatively an existing framework agreement can be used.</p> <p>The opportunity must be advertised on the Central Digital Platform by publishing a below-threshold tender notice. For services, a contract should be issued, rather than relying on the general terms and conditions included in a purchase order</p> |
| High Value transactions | Over £60,000 and up to the Procurement Thresholds | <p>A tendering process should be followed, with support from a Procurement Advisor. Alternatively it may be agreed that a framework agreement can be used.</p> <p>The opportunity must be advertised on the Central Digital Platform by publishing a below-threshold tender notice. Consideration should also be given to advertising in an appropriate trade/professional journal</p> |

| Category | Value | Process |
|------------------------------------|--|--|
| Procurement Threshold transactions | <p>Goods, Services and Works over the threshold amounts set out in the Procurement Act 2023, and/or regulations made thereunder:</p> <p>Goods and Services - £213,477;</p> <p>Works - £5,336,937</p> <p>Light Touch - £663,540</p> | Special rules apply – speak to a Procurement Advisor |

1 Introduction

- 1.1 These regulations are part of our constitution and are our procedural regulations for buying items for the Council (the Regulations). They do not apply to buying items or services from within the Council. Where services such as printing and graphic design are provided internally, these services should be used unless agreement is reached with the internal service that a particular piece of work needs to be sourced externally.
- 1.2 These regulations apply to all contracts for goods, services or works for us, or which we provide, and the award of any Concession, unless paragraphs 1.5 and 1.6 apply or you have a valid waiver under regulation 12 (section headed 'Exceptions from the regulations').
- 1.3 The regulations apply to any contract that result in us making a payment and some types of contract where a service is being provided for us which results in some income being generated for us.
- 1.4 The regulations also apply if we are acting as the lead organisation in partnership or other joint arrangement or if we appoint a subcontractor in connection with any contract.
- 1.5 The regulations do not cover grants which we may receive or make.
- 1.6 The regulations do not apply to:
 - contracts of employment;
 - Investment transactions placed by the Section 151 Officer for treasury management;
 - contracts placed by the Council Solicitor for external legal services; and
 - contracts relating to interest in land (also known as property) - this primarily relates to the purchase and disposal of land;
 - contracts relating to selling or otherwise disposing of our assets.
 - Sharing services with another contracting authority in the public interest
- 1.7 If you are in any doubt about whether the regulations apply, you must always check with the Head of Transformation and Assurance or the Head of Law and Governance.
- 1.8 Our 'best value duty' is very important. It means that we must always consider how each procurement meets our duty to secure continuous improvement in what we do after taking account of economy, efficiency, effectiveness and outcomes. As a result, we need to question whether we should be buying anything at all and, if we do, whether we can buy it best ourselves or jointly, or if we should rely on someone else to get better value.

- 1.12 The regulations have three main aims. These are to:
- keep to the obligations that govern spending public money, such as the Procurement Act;
 - get best value in the way we spend money, so that we may in turn offer better and more cost-effective services to the public; and
 - protect people who follow the regulations.
- 1.13 These regulations may be waived if the Monitoring Officer, the s151 Officer or the Head of Transformation and Assurance decides:
- you are buying something jointly with one or more public organisations and you are following their procurement processes;
 - a contract or subcontract which is governed by nationally negotiated conditions of contract from one or more professional institutions, for example Institute of Civil Engineers (ICE) building contracts and any condition of these regulations, does not match a condition in those conditions of contract; and
 - we are working in line with procurement regulations entering into a framework agreement negotiated by another public organisation.
- 1.14 **These regulations must be complied with by all employees involved in the procurement of goods, services or works. Failure to comply may result in Disciplinary action.**
- 1.15 Any interim contractor or consultant who is responsible to us for preparing or supervising a contract on our behalf must do the following. They must:
- keep to these regulations as though they were an employee , though the procedure for inviting, opening and accepting tenders will need to be agreed with the Head of Law and Governance or the Head of Transformation and Assurance.
 - produce all the records they keep in relation to the contract, if requested by the Council; and
 - at the end of a contract, send all records, documents and so on relating to the contract to the Chief Officer concerned and
 - always deal with the ownership of intellectual property rights, generally these should belong to the council
- 1.16 An employee will not, without approval from the Section 151 Officer, enter into a contract for supplying goods or services under any operating or finance lease, rental or any other credit arrangements.

2 Context

- 2.1 The UK has signed up to the World Trade Organisations Agreement on Government Procurement and is committed to compliance with its principles of fairness, impartiality, transparency and non-discrimination. The Procurement Act sets down what obligations are placed on us when we are buying.
- 2.2 The Procurement Act sets out a number of key principles that we must have regard to in carrying out procurement:
- Deliver value for money,
 - Maximise public benefit,
 - Be transparent in our procurement activities,
 - Act with integrity
 - Equal treatment and non-discrimination of suppliers,
 - Have regard to the fact that small and medium-sized enterprises may face particular barriers to participation, and consider whether such barriers can be removed or reduced.
- 2.3 In addition, the government publishes a National Procurement Policy Statement setting out the strategic priorities that all contracting authorities must have regard to when exercising any procurement activities.
- 2.4 We all now need to think about the way we arrange this, for example, e-auctions, e-tendering, or setting up a framework or placing a supply contract. More and more, councils are working collaboratively through joint procurements (in other words, buying the goods and services you need with another department or another council or councils and sometimes other public organisations).
- 2.5 If you are buying larger or expensive goods, work or services, remember that the regulations for higher value orders and contracts are stricter than for those of lower value. This is so that the benefits of a more thorough, complicated process are not outweighed by the price compared to the value of the goods, work or services in question.
- 2.6 At the highest end of the value scale, we **must** follow full procedures set out in the Procurement Act. In these cases, you **must** consult a Procurement Advisor before you start buying what you need.

3 Before we start

Before you buy goods and services

3.1 You must ensure that you have:

- (i) the appropriate authority to procure goods and services, especially for those over £60,000. Authority may come from the Council's Scheme of Delegations or a specific Cabinet or Council decision; and
- (ii) Sufficient revenue and/or capital budget to fund the purchase (please refer to the Council's Financial Regulations).

3.2 You will need to determine the value of the contract early in the process as this will affect the procurement route that you will need to follow. The value of a contract means the estimated total value over the length of time it will apply, including any extension options (**not the yearly value**). The contract values referred to within these regulations are inclusive of any VAT payable unless stated otherwise.

- If the contract is for buying a single item, which is not related to buying other items, the contract is worth the price, or estimated price, referred to in that contract.
- If the contract is for buying a related group of items, the contract is worth the total price, or estimated total price, of the group.
- If there is no set length of time for the contract, this is the estimated value of the contract over a period of four years.
- You should not split contracts to avoid the values, either by item or length. This is particularly relevant for invoice/purchase led expenditure which over time becomes a Contract, i.e. regular purchases of similar items over a period of time. There are however circumstances where it is appropriate to split a contract into "lots".

3.3 Before starting a procurement process, you need to make sure that you have carefully identified the need and fully assessed the options for meeting it, i.e. think carefully about what you are commissioning and how best to do this. Before you start, you **must** consider the following:

- Is there a clear business need, supported by appropriate evidence and a budget in place?
- Can you buy what you need with another service or another council? If you think you could save us money or achieve other advantages if you bought what you need with someone else, consider whether there is an existing framework arrangement, in-house provider or contract you can use. This framework or contract could be one we have already set up or one set up by another council or joint-purchasing organisation or run centrally by the Government (such as Crown Commercial Services).

- Is there some kind of recognised purchasing group in place (often referred to as a buying consortium) where members can use the purchasing arrangements to buy goods or services? If there is a group in place, you do not have to keep to these regulations. However, you can only buy the goods or services that are covered by the group arrangements. If the goods or services are outside the scope of the group arrangements, you must use some other method of procurement in line with these regulations. A Procurement Advisor can give you more advice on this.

You need to be able to evidence that you have fully considered what you need to buy, why and how this is to be done. It is essential that you produce and maintain comprehensive records of all decision-making throughout the procurement of the contract and retain such records for at least 3 years from the date the contract is entered into.

- 3.4 If after considering other buying solutions you are going to use a joint procurement with another council, the relevant Chief Officer in consultation with the Head of Law and Governance or the Head of Transformation and Assurance may determine that the procurement regulations for another public authority should be followed rather than these regulations.
- 3.5 If you decide that you or your partners are likely to need to buy the goods or services again in the future, it may be that the best way to buy them is by setting up a framework agreement. A framework agreement allows a number of providers to sell you the goods, work or services you need when you need them. There are many types of contracts which will be suited to a framework agreement and it is important that you agree this with a Procurement Advisor before you start to make sure that the type of contract being used is most suitable.

Purchase of ICT hardware, software and services

- 3.6 If you are planning to buy any ICT hardware, software or services, you must consult the Technology Services Manager to make sure that the procurement is compliant with the Council's ICT policy/strategy and existing software or equipment where relevant.

Employment issues and TUPE (Transfer of Undertaking Protection of Employment Regulations)

- 3.7 Entering into new contractual arrangements or changing existing contractual arrangements can give rise to TUPE implications. It is not always obvious that there are TUPE implications (for example, when a contract with another supplier comes to an end and is to be put out to tender again). So, **if in any doubt, you must get the** advice of an HR or Legal specialist to make sure that any relevant TUPE arrangements are in place.

- 3.8 Where it has been decided that goods, work or services should be bought from an external source, you **must** consider the effects this may have on the existing in-house team and the possibility of staff transferring to the new provider under TUPE.
- 3.9 These contracts **must** contain conditions to make sure appropriate workforce (and other) information will be made available in enough time when that contract is due to end to make sure that we can fulfil TUPE obligations.
- 3.10 TUPE situations will almost always give rise to pensions issues.

HR will support you in getting the advice you need on this from the Pensions Section. You will need an actuarial statement on pension information for any proposed TUPE transfers. HR will arrange to get this from the Pensions Section. It is the responsibility of the person managing the tender process to liaise with HR on TUPE matters.

Making sure we keep to law and policies

- 3.11 When making or proposing a contract on our behalf, the procuring officer will:
- keep to all relevant legal requirements including Procurement Act, relevant health and safety, environmental and equalities, diversity and discrimination law;
 - keep to these regulations; and
 - keep to our financial regulations.

Honesty and conflicts of interest

- 3.12 Every officer who takes any decision or has any influence about a contract must keep to our code of conduct for employees and must comply with the Bribery Act 2010. They must also complete and sign the Declaration of Interest and Confidentiality document.
- 3.13 Every officer who has a financial interest in a contract must advise their Head of Service and contact the Monitoring Officer who will make a record in a book we will keep for the purpose, under Section 117 of the Local Government Act 1972.
- 3.14 You should not accept any gifts or hospitality from anyone tendering for a contract we are leading on or from any current supplier. If you do, this may be a disciplinary offence. You **must** tell the Monitoring Officer if you are dealing with a contract for the Council and have been offered such a gift or hospitality and advise your Head of Service. Further details on Gifts and Hospitality can be found in the Employee's Code of Conduct.

4 Commissioning the Procurement

Defining the Need

- 4.1 At the least, you **must** clearly and carefully:
- (i) specify the goods, work or services to be supplied;
 - (ii) the agreed programme for delivery;
 - (iii) the terms for payment together with all other terms and conditions; and
 - (iv) ensure that you will have the funds in the budget to pay for them.
- 4.2 This means you **must** decide before beginning the procurement process the size, scope, and specification of the goods, work or services needed. If you are buying with someone else, you **must** decide this scope with your partners first.
- 4.3 When identifying and defining the need, you should make sure you have involved an appropriate wider range of organisations relevant to the goods, work or services to be supplied. By knowing the market and encouraging a wider supply base, you have more chance to find the right providers and achieve the right services at the right price.

Procurement strategy

- 4.4 Once you have decided on the need, you **must** decide on a strategy for buying the goods, work or services.
- 4.5 This means taking a step back from the traditional procurement process and assessing the purchasing options particularly when purchasing services. For example, using a grant may be appropriate for a highly specialised service, if you know there is only one provider, or a very few suspected providers, or the project is of a low financial value. This is because it would not make financial sense for one specialist provider to go through a full tendering process.
- 4.6 You **must** consider options for delivering goods, work or services. The options for goods, works or services are:
- not buying the goods, having the work done or providing the services at all;
 - providing the goods, work or services ourselves (i.e. appropriate use of in-house support services e.g. printing and design work);
 - getting someone else to provide the ongoing goods, work or service (using the 'third sector' or another local authority or public organisation); or
 - providing the goods, work or services with someone else (the private or 'third' sector or another local authority or public organisation).

4.7 Once you have established this, you will then need to consider the most appropriate procurement route; this will largely be determined by the value of the procurement and the options for this are set out in section 5.

4.8 If you are in any doubt about the above, you should get advice from a Procurement Advisor.

4.9 As part of the commissioning of the procurement, you will also need to consider what else is important to the Council in this procurement. The two key issues are:

Social Value - do you just need the goods, work or services? Or are there other things you want to bring about (for example, improved environmental performance, new jobs) or added social value. In certain cases the procurement process can help achieve this wider social value by meeting a particular social, environmental or economic aim. In respect of public service contracts, the Public Services (Social Value) Act 2012 requires you to consider how your proposal might improve the economic, social and environmental well-being of the Council's area, and how the contract might secure that improvement.

Climate Change - consider the impact of what you are purchasing has on the environment and whether anything can be done to contribute towards the Council's ambition to reduce our impact on climate change. This could include:

- (a) identifying opportunities for reducing emissions that contribute to climate change and poor air quality. This includes sourcing of low or zero carbon energy wherever possible and phasing out the use of fossil fuels from our fleets, and transitioning to zero or low emission vehicles.
- (b) the application of relevant environmental and sustainability standards to support minimising the ecological harm caused by chemicals such as herbicides.
- (c) encouraging suppliers to adopt processes and procedures to reduce their environmental impact including the volume and type of packaging used for the delivery of goods.

4.10 You should include references to these issues in your specification and evaluation model as appropriate.

5 How we buy the goods and services we need

5.1 Choosing the procurement route to be followed is largely dependent on the value of the contract. The options are outlined in the table at the beginning of these Regulations and are summarised below:

| Category | Value | Process |
|--|--|--|
| Minimal value transactions | Below £1,000 | No quotations required |
| Low value transactions | £1,000 up to £10,000 | 2 written quotations required |
| Intermediate value transactions | £10,000 up to £30,000 | 3 written quotations required |
| Medium value transactions | £30,000 up to £60,000 | quotations to be obtained via a formal process. Sections 84 to 88 of the Procurement Act apply. |
| High value transactions | £60,000 and up to the Procurement Thresholds | Tendering process in accordance with these Regulations and sections 84 to 88 of the Procurement Act. |
| Above Procurement Threshold transactions | Check current Procurement Thresholds | Tendering process required in accordance with the Procurement Act |

- 5.2 Framework agreements may be used instead of obtaining quotations or tendering for goods, works and services.
- 5.3 Details on each of these processes is explained in more detail in the sections on Quotations (section 6) and Tenders (section 7).
- 5.4 If you need to purchase goods or services urgently and do not have sufficient time to follow the relevant process, please refer to the Section on Exceptions (section 12).

6 Quotations Process

Minimal Value Transactions (below £1,000)

- 6.1 For transactions valued below £1,000 (not including VAT), you still have a duty to ensure best value in terms of economy, efficiency and effectiveness is obtained. There is no specific requirement to obtain alternative quotations but if you think that the first quotation you obtain is expensive then you should consider obtaining at least one further quotation.

Low-value transactions

- 6.2 For transactions valued at or over £1,000 but below £10,000 (not including VAT) you **must** get two written/evidenced quotations before you issue a purchase order specifying the goods, work or services. Price comparisons undertaken via the Internet will be acceptable providing evidence is retained (e.g. screen prints) – this will generally apply to the purchase of goods.

Intermediate-value transactions (i.e. £10k to £30K)

- 6.3 For transactions valued at or over £10,000 but below £30,000, you **must** get three written quotations before you issue a purchase order or contract (for services and works), specifying the goods, work or services.

Medium Value Transactions / Formal Quotes Process (i.e. £30k to £60k)

- 6.4 For all transactions valued at or over £30,000 but below £60,000, you will need to follow a Formal Quotes Process.
- 6.5 You must:
- Publish a below-threshold tender notice on the Central Digital Platform;
 - Seek to obtain a minimum of three written quotations;
 - Maintain a record of the quotations received;
 - Maintain comprehensive records of all decision-making;
 - Issue a purchase order to the provider of the successful quotation.
 - For services or works you should obtain legal advice as to whether it is necessary to issue a contract – advice should be sought at the outset of the procurement process so that contract details can be issued to interested parties as part of the quotations process.
 - Publish a contracts details notice on the Central Digital Platform as soon as reasonably practicable, after entering into the contract.

Receiving Quotations

- 6.6 For quotations below £30,000 the only requirement is that they must be evidenced in writing and you should retain this evidence for a minimum of 24 months.
- 6.7 For quotations of £30,000 up to £60,000 you need to have a formal process for accepting quotations.

The quotations must be:

- opened at a set time;
- opened by an officer nominated by the Head of Service or Service Manager as appropriate ;
- logged under the price given; and
- kept on the relevant file.

6.8 Electronic quotations can be accepted. They should be sent to a specific email address, preferably a generic service email address for the service.

Evaluation of Quotations and the Decision to Award

6.9 All written quotations for contracts valued below £60,000, **must** be evaluated on the basis of the lowest price, unless other conditions are shown in the document used to invite quotes. If this is the case, the contract should be awarded on that basis. For guidance on the use of quality evaluation criteria, please see 7.32 to 7.38.

6.10 The decision to award will be taken as follows:

- Quotations from £1,000 up to £10,000 – Service Manager or officer authorised by them;
- Quotations of £10,000 up to £60,000 – Service Manager or above

6.11 For quotations of £30,000 and above, the award decision should be publicised on the Central Digital Platform by publishing a Contract Details Notice as soon as practicable after entering into the contract and recorded in the Contracts Register.

Exceptions to the Quotations Process

6.12 If you receive less than the specified number of quotations, you must try and get other quotations or an exemption from the regulations in line with Section 12 (section headed Exceptions from the Regulations).

7 Tender Process

7.1 You **must never** deliberately split down the value of contracts to avoid tendering. Wherever possible, we should make our purchases in the form of a single large contract rather than a series of smaller contracts.

7.2 However, there will be circumstances where splitting contracts into “lots” is appropriate. A Procurement Advisor will guide you on whether this is appropriate.

Full tender procedures below Procurement Thresholds

7.3 For transactions valued at over £60,000 (including VAT) but below the Procurement Thresholds, you must carry out a formal tender process in line with the following principles:

- Openness
- Transparency
- Visibility
- Value for money
- In the best interests of the council
- Competition

7.4 You should follow the Open procedure for tenders over £50,000 but below the Procurement Threshold. You should seek advice from a Procurement Advisor on all tenders.

Ensure that comprehensive records are maintained of all decision-making during the procurement procedure and are maintained for a minimum of 3 years from the date the contract is entered into.

Full tender procedures (over the Procurement Thresholds)

7.5 If your contract has a value over the relevant Procurement Thresholds shown in the table below, you **must** follow the Procurement Act 2023.

| | Thresholds from January 2024 |
|---|------------------------------|
| For goods and services (including goods and consultancy services) | £213,477 |
| For works | £5,336,937 |
| For Light Touch Contracts | £5,336,937 |

These limits are changed in January every two years. You **must** check the latest limits before you go ahead.

7.6 If you are inviting tenders for contracts over Procurement Thresholds, you **must** decide on the procedure to follow before you advertise and it **must** be one of the following.

- Open procedure (all interested providers send us a tender in response to a tender notice).
- Competitive flexible procedure (a process that sets conditions which a supplier must satisfy in order to participate as long as those conditions are a proportionate means of ensuring that suppliers have the legal and financial capacity, or the technical ability, to perform the contract).

You must discuss and agree the appropriate route to use for your tender with a Procurement Advisor as part of the sourcing strategy.

- 7.7 The Procurement Act, and associated guidance, gives further detail on how competitive tendering can be lawfully achieved. If in doubt, you should get the advice from a Procurement Advisor.
- 7.8 The Procurement Act contains conditions relating to providing notices and other documents electronically.
- 7.9 For each contract, unless we say differently below, you must publish a tender notice on the Central Digital Platform. Any advertisements you publish as well as this (e.g. in a specialist publication) **must not**:
- appear in any form before you have published a tender notice on the Central Digital Platform; and
 - contain any information in excess of that contained within the tender notice on the Central Digital Platform.

See also 7.15 and 7.16 regarding advertising tenders

- 7.10 You **must** always follow the minimum timescales relating to tender procedures governed by the Procurement Act. The timescales given for completing and returning tenders are only the minimum, so there is flexibility to extend timescales to encourage bids from smaller providers or consortiums. If procurement falls under the Procurement Threshold, there is no formal time limit. Similarly, when faced with short timescales within which to use the funds, you should still make sure the process used is fair, clear, proportionate and accessible to all, including SMEs.

Using the Competitive Flexible Procedure

- 7.11 You **must** get advice from a Procurement Advisor as soon as possible before starting a tender process, particularly when using a competitive procedure other than the open procedure.

Tender documents

- 7.12 Every invitation to tender should include:
- the nature, purpose, start date and period of the contract;

- the detailed specification and quantities of goods, work or services to be supplied or carried out;
- the times at, or within which, and the places at which the goods, work or services are to be supplied or performed;
- a copy of the conditions of contract which the successful contractors will have to keep to (see section 10 for details);
- a requirement for the tenderer to provide information about their technical, commercial and financial standing if we do not already have the information;
- information on TUPE, where applicable;
- the evaluation criteria (with weightings) for awarding the contract;
- a statement that we do not have to accept the lowest or any tender;
- the closing time and date, and address for receiving tenders; and
- a named procurement advisor.

Insurance Requirements

- 7.13 Insurance conditions must be contained in the tender specification and the conditions of contract. The type and level of insurance cover must be discussed and agreed with the Chief Internal Auditor and Risk Manager.
- 7.14 The insurance limits advised will relate to each claim. For public liability and employers' liability, the cover must be in place throughout the period covered by the contract. For professional indemnity, the conditions are more complicated. Not only must the cover be in place throughout the period covered by the contract but also for another six years after the end of the contract (or 12 years if the contract is under seal). For certain types of services, for example, financial advice, the amount of professional indemnity insurance cover will need to be higher to protect us in case anyone gives inappropriate advice.

Advertising

- 7.15 As a minimum you must advertise the goods, services or works required on the Central Digital Platform by publishing the relevant notice. This must be done before advertising the opportunity elsewhere. You should consider whether it is appropriate to advertise the tender in an appropriate trade/professional journal or a local newspaper.
- 7.16 For all tenders over the Procurement Threshold you are required to place a tender notice on the Central Digital Platform. Other notices may also need to be published - seek guidance from your Procurement Advisor on what is required for your tender.

Issuing and return of tenders

- 7.17 You should always use electronic procurement (or e-procurement) systems rather than paper systems where practicable. All tenders should be sent out and returned electronically via an approved e-tendering system where possible.
- 7.18 All tenderers should be informed that the Council will not accept or consider tenders sent in by fax or email.
- 7.19 The procuring officer must send to every person who wants to give us a tender any documents which meet the requirements of regulations 7.12. This includes a returnable tender form or other document which tells each company wanting to tender to:
- include their offer price (or prices) for the goods, work, services or utilities;
 - include their signature or seal;
 - return the filled-in tender form by a certain date and time by the method stated in the tender documents.
- 7.20 Where conditions of participation are issued as part of the tender process then the rules for the issue, return and opening of tenders should be followed.

Receiving and opening tenders

- 7.21 Every response to an invitation to tender should be delivered no later than the date and time stated for the return of tenders in the invitation to tender. Generally, we will not open a tender if it is received late. In exceptional circumstances where a tender is received late but before the tenders are opened, this may be accepted subject to the relevant Chief Officer and either the Monitoring Officer, the s151 Officer or the Head of Transformation and Assurance being satisfied that there is a valid reason for the tender arriving late and that this was beyond the control of the tenderer.
- 7.22 If the circumstances mean it is appropriate, e.g. there has been a delay by the Council in providing a clarification response, the Service Manager or Chief Officer may extend, for a reasonable period, the closing time and date for receiving tenders. This applies as long as all participants have been notified (i.e. every organisation that was invited to tender), in the same way, and this must be before the closing date and time for the return of the tenders.

Electronic Procurement

- 7.23 All tenders returned via the e-tendering system will be opened on or shortly after the specified date and time, via officers authorised to use the e-tendering system.
- 7.24 The e-tendering system will maintain a record of the tenders received, opened and the officer(s) undertaking the opening of the tenders.

7.25 Once opened, the tender documents will be sent electronically to the lead officer for the procurement. The lead officer will arrange for the tender documents to be stored securely on the network and arrange for those officers involved in the evaluation process to have access to them.

Paper/Hard copy

7.26 If there is authorisation to use a non e-procurement procedure, all tenderers should:

- be asked to provide both a paper copy of their tender and a copy on a read-only CD-ROM, securely packaged and clearly labelled with the tenderer's name and contract reference, and
- be provided with a tender envelope, which bears the word 'TENDER' followed by the subject the tender relates to and the closing date and time for receiving tenders;
- advised that the tender envelope should not be labelled or marked in any way that identifies who is providing the tender.

7.27 The Head of Law and Governance will ensure that there is an appropriate system in place for the secure storage of tenders until the time we have given for their opening. We will not open tenders before the closing date and time.

7.28 Two officers authorised by the Head of Law and Governance **must** open all tenders at the same time. They **must** not be involved in the tender evaluation and award.

7.29 Any tender envelope which is labelled or marked in such a way that identifies who is providing the tender will be rejected.

7.30 The authorised officers will list the opened tenders in the tenders record book. Tenders must be signed and dated by the people opening them. Pages with prices in them do not need to be signed, only the total price page.

7.31 Once opened, arrangements will be made for the lead officer for the procurement to collect the tenders. The lead officer will arrange for the tender documents to be stored securely and arrange for those officers involved in the evaluation process to have access to them.

Evaluating tenders

7.32 For contracts valued over £60,000 and for all contracts governed by the Procurement Act, we **must** use the 'best value' tender evaluation procedure based on identifying the most advantageous tender (MAT). On occasions where the only obvious difference between products and solutions will be that of price (for example if you are buying stationary or other standard items), tenders will normally be evaluated based upon lowest price.

It is unlikely that you could choose providers for services or work on price alone as these will often need wider evaluation techniques. When deciding on how we evaluate tenders, we need to be careful that using a lowest-price method of evaluation rather than wider considerations to identify the MAT is appropriate for the procurement.

7.33 The evaluation process involves scoring tenders fairly by a panel of officers or independent experts using criteria which **must**:

- be already set out in the invitation to tender documents in order of importance;
- be strictly kept to at all times throughout the tender process;
- reflect the principles of best value;
- include price;
- consider whole-life costing, particularly in the case of capital equipment where the full cost of maintenance and so on should be taken into account;
- be able to be assessed independently;
- be weighted according to importance;
- show wider social value if this has been included in the specification; and
- avoid any discrimination, or other cause which goes against any of our policies or that would be a breach of any of the principles set out under 2.2.

7.34 The panel of evaluators should review and score the submissions independently. A moderation process should then take place to consider the scores and comments of each officer and to reach a consensus on each tenderers score.

7.35 A record should be maintained by each officer involved in the evaluation process of their scores and notes to support their scores. Notes can be of positive attributes of the tender, any omissions or concerns. This information will be used to feedback to unsuccessful tenderers. A comprehensive record should be maintained for at least 3 years from the date the contract is entered into, as this may be needed as evidence if the contract award is challenged.

7.36 If you use this evaluation method, a decision to award the contract must be in favour of the company which sends us the most advantageous tender. (In other words, the tender that achieves the highest score in the independent assessment.)

- 7.37 At the end of the evaluation process, prior to making the final award decision a financial appraisal will need to be conducted on the preferred bidder. This will generally be in the form of a company credit check and will be arranged by the Procurement Advisor.
- 7.38 In certain circumstances you may decide not to award the contract to any of the tenderers. You will need to advise all tenderers of the decision and the reasons for this and, where the value of the contract is above the Procurement Threshold, a procurement termination notice will need to be published on the Central Digital Platform. If you intended to revise the specification and re-start the procurement process then it may be appropriate to advise the unsuccessful tenderers of this.

Awarding Contracts

- 7.39 The decision to award a tender of over £60,000 will be taken by the relevant Chief Officer. Please refer to Section 10 for details on who can sign contracts.
- 7.40 You **must** make sure that the appropriate budget holder has the funds in place before you make the award.
- 7.41 You **must** record in writing the results of the tender-evaluation process and the decision to award a contract.
- 7.42 We cannot accept any tender which breaches the Procurement Act.

Award of Contracts below the Procurement Threshold

- 7.43 All contracts awarded that are below the Procurement Threshold must be publicised on the Central Digital Platform by publishing a Contract Details Notice. The contract award should also be publicised on the Council's website and the Contracts Register updated accordingly.
- 7.44 While a standstill period is not compulsory for a contract below the Procurement Threshold, depending on your procurement, it may be prudent to consider adopting a voluntary standstill period (a minimum of 8 working days) in order to mitigate against the likelihood of a challenge.

Award of Contracts Above the Procurement Threshold

- 7.45 Prior to publicising the outcome of the procurement and awarding the contract, information must be issued to all bidders who submitted an assessed tender (an "Assessment Summary"). This is to provide all bidders with feedback and reasons for their tender scores. The Assessment Summary **must** include:
- details of the award criteria (including the weightings) and assessment methodology used for assessing the tender;
 - the score or ranking the company achieved against each criterion and reasons for those scores;

- explanation(s) as to where the tender was unsuccessful and why it was unsuccessful - this should include reference to the assessment methodology;
- the scores and reasons why the winning tender was successful; and
- any other **relevant** information.

Standstill period (for Contracts Above the Procurement Threshold only)

- 7.46 Once the Assessment Summaries have been issued, the outcome of the procurement must be publicised by publishing a Contract Award Notice on the Central Digital Platform. For all contracts tendered under the Procurement Act, we **must have at least** an 8 (eight) working day ‘standstill period’ between publication of the decision to award and the start of the contract. The date that the Contract Award Notice is published, marks the start of the 8 working day standstill period. Special rules apply if a company asks us for a debrief on the tender process. Even if a company asks for a debrief outside of the standstill period, we **must** still provide this. In this instance, you must get advice from a Procurement Advisor as soon as possible.
- 7.47 Once the standstill period has ended, and there have been no formal challenges submitted, you are free to enter into the contract. A Contract Details Notice must be published on the Central Digital Platform **within 30 days** of the contract being entered into.

Tender Records and Audit Trail

- 7.48 The Lead Officer for the tender **must** keep adequate records of the procurement process for a minimum of 3 years following contract award. Such records should include:
- invitations to quote/tender
 - quotations/tenders
 - details of any exceptions and reasons for them
 - award criteria used
 - tender documents
 - reasons for selecting the successful contractor and for not selecting unsuccessful contractors
 - details of all communications with tenderers
 - any decisions to suspend these regulations and use of any delegated powers and

- details of all other decision-making in relation to the procurement and reasons why those decisions were made.

7.49 Records relating to the successful tenderer should be kept for a minimum of six years after the end of the contract to which they relate. However, documents relating to unsuccessful tenderers may be destroyed after 3 years from the award of the contract provided there is no dispute about the award.

8 Framework agreements (including Crown Commercial Services, ESPO, WMS)

8.1 You **must** always consider use of framework agreements for goods, work and services, **if they exist**, for all procurements over £30,000.

8.2 Framework agreements are arrangements that are already in place with providers for providing goods, work or services on agreed terms for a set period for estimated quantities against which orders may be placed, (known as call off contracts), if and when needed during the contract period. They offer benefits of bulk-buying, improved services and reduced administration costs over the period of the arrangement.

8.3 A framework agreement may have the option for you to hold a mini-competition with all the capable providers on the framework when you come to buy for us. You **must** get advice from a Procurement Advisor on carrying out a mini-competition.

8.4 You should seek advice from a procurement advisor on whether a call-off contract from an existing framework may be relevant in your own case. You will also need to check if legally you can use a particular existing framework agreement.

8.5 If there isn't a framework already in place (or if one does not exist with partners which you can use), you **must** consider if it would be better value to set up a new framework. This is likely if you are going to need to buy the same or similar goods and services again in the future. You can get guidance on how to set up a framework from a procurement advisor.

9 Concession contracts

9.1 You must use a concession contract if we want to hire someone to provide a service within the council area if they will be charging the public for the services being provided.

9.2 There are a number of exemptions if a public works concession contract is proposed.

9.3 If the company which plans to provide the services is going to subcontract the services, this may fall within the Procurement Act rules. In all cases, if the company is buying goods or services as part of the concession contract, any procurement should be carried out in line with these regulations.

9.4 You **must** get advice from a procurement advisor before carrying out any procurement relating to a concession contract.

10 Conditions of contract

10.1 There must be written evidence of every contract and all contracts must be in a form agreed with the Head of Law and Governance.

10.2 All transactions **must** use an appropriate model form of contract approved by the Head of Law and Governance (or a form decided by the Chief Officer after consulting the Head of Law and Governance).

10.4 For all contracts for services if the model conditions of contract are not suitable, you **must** consult Legal Services to produce a suitable set of conditions of contract (with other advisors if necessary) before inviting tenders.

10.5 The following officers are authorised to sign Contracts (or Purchase Orders where applicable):

- Quotations of £1,000 up to £10,000 – Service Managers or an officer nominated by them;
- Quotations of £10,000 up to £60,000 – Service Managers;
- Contracts of £60,000 up to £100,000 – Chief Officers
- Contracts of £100,000 or above will be done under seal

10.6 If a contract is strategically important or politically sensitive, or if the extended limits would be valuable, for example, contracts for land or property, the contract **must** be in writing and an official seal must be placed on it. **Note** that contracts that require execution under the Council's seal can only be signed by a limited number of authorised signatories. This should be arranged with Legal Services.

11 Changes to Contracts

Transferring contracts

11.1 In appropriate circumstances we may agree to transfer a contract to another contractor. You must ask for advice on how to transfer a contract from Legal Services, before any contract is transferred.

Changing and extending contracts

11.2 Depending on any legal restrictions and the need to keep to these regulations, a Chief Officer may authorise the following extensions to an existing contract, if the budget has been confirmed.

- An extension for a particular period under the terms and conditions of the contract (but depending on the satisfactory performance when monitoring the contract).
- A single extension of the contract by up to 12 months as long as this would not place the contract over the relevant Procurement Threshold or break any law.

Details of any extensions to contracts should be kept with the original contract.

- 11.3 Any changes (including variation orders), and if relevant a resulting change in price, decided in line with the contract terms may be authorised by the officer who signed the contract or a person nominated by them providing those changes are lawful, comply with these regulations and are within the approved budget for the contract.
- 11.4 Any extension to the contract period cannot be longer than the original length of the original contract.
- 11.5 You **cannot** extend or change contracts arranged under the Procurement Act without consulting a Procurement Advisor and/or seeking Legal advice.

12 Exceptions from the Regulations

- 12.1 An exception to these regulations means we give permission to agree a contract without keeping to one or more of these regulations. We may grant an exception under conditions set out below. We cannot grant an exception if to do so would mean breaking any laws on public procurement or other relevant legislation.
- 12.2 The relevant Chief Officer in consultation with two of the following officers may grant an exception to these regulations for contracts under £100,000 (including VAT):
- Monitoring Officer (Head of Law and Governance);
 - Section 151 Officer and Deputy Chief Executive (Resources);
 - Head of Transformation and Assurance.

For contracts over £100,000 approval will also be needed from the relevant Cabinet Member.

- 12.3 If you want an exception, you must apply in writing using the request for waiver form and send it to your Chief Officer in the first instance. Please include the exception you want and your reasons for it.
- 12.4 The Head of Law and Governance will keep a register of all exceptions to these regulations.

- 12.5 We will not agree an application for an exception unless you have a good reason. We do not consider a lack of time caused by poor forward planning as a good reason and so will not allow it.

Exceptions which involve the request for waiver form

- 12.6 We may grant an exception in the following circumstances:

- If there is an unexpected emergency involving danger to life or health or serious damage to property, or if the goods, work or services are needed more urgently than would be possible if we followed the tender or quotation procedure.
- If, for technical reasons, the goods, work or services can be bought from only one provider and this can be justified.
- If the proposed contract is an extension or change to the scope of an existing contract with a value (including the change or extension) that is below the Procurement Threshold. However, this does not apply if the existing contract provides for an extension.
- If you are buying works of art, museum artefacts, manuscripts or archive collection items.
- To develop our aims to develop the economy, without breaking public procurement rules.
- In line with Section 41 or Section 74 of the Procurement Act regarding Direct Award in Special Cases and Modification of Public Contracts.

Exceptions which do not need you to fill in the request for waiver form

- 12.7 We will grant an exception to these regulations and you will not need separate authorisation in the following circumstances:

- If you place an order with a single provider under an existing corporate contract or framework agreement.
- If you place an order through a buying consortium of which we are a member.
- As part of a partnering contract that involves a series of contracts with one provider.
- If you have attempted but have been unsuccessful in obtaining the required number of quotations or more than one tender.
- If any law says we must contract differently from these Procurement Regulations.

- If you place an order under an arrangement, of which we are a member that has gone through a competitive process which meets conditions in the Procurement Act, for example, Crown Commercial Services.
- For goods, work or services which must be provided by a public utility or a local authority other than us under their legal powers.