

## **SECTION 6**

### **CONTRACT PROCEDURE RULES**

(Revised February 2019)

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## **CONTRACT RULES**

### **SECTION 1: GENERAL COMPLIANCE AND SCOPE**

#### **1. COMPLIANCE**

- 1.1 Every contract entered into by the Authority shall be entered into pursuant to or in connection with the Authority's functions and shall comply with:
- 1.1.1 All relevant legislation, statutory guidance and codes e.g. Local Government Transparency Code;
  - 1.1.2 The relevant European procurement rules when applicable and whilst they have a direct effect on the UK (i.e. the EC Treaty, the general principles of EC law and the EC public procurement directives implemented by the UK Regulations);
  - 1.1.3 The Authority's Constitution including these Contract Rules, the Authority's Financial Rules and Scheme of Delegation;
  - 1.1.4 The Authority's strategic objectives, Procurement Strategy, Procurement Code (which includes template documentation) and relevant policies.
- 1.2. The policy of the Authority, and the objective of these Contract Rules, is to ensure that all works, supplies and services:
- 1.2.1 Are obtained with probity and propriety to ensure the proper expenditure of public funds;
  - 1.2.2 Are appropriate for the purpose for which they are obtained;
  - 1.2.3 Ensure Best Value for Money.

#### **2. SCOPE**

- 2.1 These Contract Rules apply to any arrangement made by, or on behalf of, the Authority for the carrying out of works or services for the provision of services.
- 2.2. These Contract Rules do not apply to
- 2.2.1 contracts of employment which make an individual a direct employee of the Authority;
  - 2.2.2 the acquisition, disposal, or transfer of land (which must be carried out by the Executive Director: Resources and S151 except where services or works are required by the Authority as part of the land transaction. E.g. development agreements;

- 2.2.3 contracts relating to the placement of deposits or raising of loans under the treasury management strategy;
- 2.2.4 purchases made at public auction; and
- 2.2.5 the giving of grants.

## **SECTION 2: COMMON REQUIREMENTS**

### **3. CALCULATION OF CONTRACT VALUES**

- 3.1 Unless otherwise stated, the calculation of the estimated value of a procurement shall be based on the total amount payable in pounds sterling, net of VAT, as estimated by the Authority over the entire contract period, including any proposed extension to the initial contract period.
- 3.2 The estimated value is to be calculated as at the date the contract is first advertised or the Candidates are contacted, whichever occurs first.
- 3.3 Contracts should be for a fixed term, but where this is not possible (e.g. hire agreements) the contract value should be calculated by multiplying the monthly value by 48.
- 3.4 Contracts must not be artificially under or over-estimated or divided into two or more separate contracts where the effect is to avoid the application of these Contract Rules or the Regulations.

### **4. AUTHORISED OFFICERS AND THEIR RESPONSIBILITIES**

- 4.1 Authorised Officers are persons responsible for carrying out the procurement in question and who have received corporate training on these Contract Rules, the Regulations and the Procurement Code.
- 4.2 The Authorised Officer must proceed with the procurement in a manner commensurate with its complexity and value, by:
  - 4.2.1 appraising the need for the expenditure and its priority;
  - 4.2.2 defining the objectives of the procurement;
  - 4.2.3 assessing the risks associated with the procurement and how to manage them;
  - 4.2.4 considering what procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing, partnering, packaging strategy and collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium and frameworks;
  - 4.2.5 consulting users as appropriate about the proposed procurement method, contract standards and performance and user satisfaction monitoring;

- 4.2.6 Checking to see if a corporate contract already exists e.g. stationery contract;
- 4.2.7 Where the procurement involves a potential change to services provided by the Authority the Authorised Officer ensuring compliance with
- the Authority's duty to consult under Section 3 Local Government Act 1999
  - the Authority's duties under the Equality Act 2010.
  - The Public Social Value Act 2012 for contracts for services over the EU threshold to ensure how the procurement might improve the economic, social and environmental well-being of the geographical area the Authority serves.
- 4.2.8 Ensuring the Budget Holder has sufficient budget to sustain the contract for the life of the contract.
- 4.2.9 for Quotes with a value of £10,000.00 or below attaching the relevant standard terms and conditions to the purchase order or otherwise draw the attention of the Supplier to these standard terms and conditions;
- 4.2.10 for Quotes and Tenders above £10,000.00, instructing the Council's Solicitor in writing to draft or approve the formal written contract terms and conditions that are to apply to the proposed contract;
- 4.2.11 ensuring that a purchase order is raised for the contract.
- 4.3 Where any procurement may result in any employee either of the Authority or of a service provider being affected by any transfer arrangements, Authorised Officers must ensure that the application of the Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE) is considered and obtain legal advice before proceeding with inviting Tenders or Quotes.

- 4.4 Any procurement that is:
- over EU threshold and TUPE applies or
  - is over budget

shall be referred to the relevant committee or council for decision, unless otherwise stated elsewhere in the Authority's Constitution.

5. **CONTRACT VALUES**

- 5.1 Where the total value for a purchase is within the values in the first column below, the award procedure in the second column must be followed:

<b>Estimated Total Contract Value</b>	<b>Contract Letting Requirements &amp; Forms of Contract</b>
£10,000 and below	<p>The Budget Holder can purchase from the source that offers the Best Value for Money to the Authority.</p> <p>This could be demonstrated by the obtaining of 2 written Quotes, where this is possible.</p> <p>Contracts shall be by purchase order with standard terms and conditions attached.</p>
Above £10,000 to £50,000	<p>Shall be advertised on the website of the Authority (and/or other public advertisement as determined by the Authorised Officer) unless, in consultation with the S151 officer, and the Council's Solicitor, it is agreed to approach suppliers on an ad hoc basis (in which case 3 written quotes shall be sought).</p> <p>Any procurement opportunity of £25,000.00 or above that is advertised shall also be advertised on Contract Finder within 24 hours of any other adverts appearing together with unrestricted and full direct internet access to relevant contract documents.</p> <p>Procurement opportunities advertised on Contract Finder shall be procured using the open procedure.</p> <p>A formal written contract prepared/ approved by the Council's Solicitor must be utilised.</p>

<p>Above £50,000 to EU Threshold</p>	<p>Shall be advertised on the website of the Authority and on Contract Finder (within 24 hours of any other adverts appearing) (and/or other public advertisement as determined by the Authorised Officer) together with unrestricted and full direct internet access to relevant contract documents</p> <p>An open procedure shall be followed for supplies and services.</p> <p>Pre-Qualification Questionnaires (PQQ's) can be used in procurements above the lower EU threshold for supplies and services for tender opportunities for <b>works</b> contracts. A formal written contract prepared/approved by the Council's Solicitor must be utilised.</p>
<p>EU Threshold and Above</p>	<p>Whilst required by the Regulations, shall be advertised in the Official Journal of the European Journal (OJEU), on the website of the Authority and on Contract Finder (within 3 days of the receipt of OJEU notice at publications office or within 24 hours of the OJEU notice being published) (and/or other public advertisement as determined by the Authorised Officer)</p> <p>Pre-Qualification Questionnaires (PQQ's) can be used in procurements above the lower EU threshold for supplies and services for tender opportunities for supplies, services <b>and works</b>.</p> <p>The Procurement Adviser in consultation with the Council's Solicitor shall advise on the most appropriate EU procurement procedure to be used for the relevant supplies, services and/or works to be procured. The two most common procedures are:</p> <ul style="list-style-type: none"> <li>• Open Procedure – anyone can submit a tender</li> <li>• Restricted Procedure – following receipt of expressions of interest a pre-qualification questionnaire (PQQ) is used to shortlist Candidates who are then invited to submit a tender.</li> </ul> <p>The following procedures can only be used in certain circumstances following advice from the Council's Solicitor.</p>

	<ul style="list-style-type: none"> <li>• <b>Innovation Partnership;</b> This may be used when the Authority is seeking innovative ideas where solutions are not already available on the market and there is also an intention to include both the development of the outcome and its subsequent purchase (subject to meeting agreed performance levels and maximum costs) in the procurement.  A structured partnership will be established for the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the agreed performance levels and costs.</li> <li>• <b>Competitive dialogue</b> This can be used where either of the following apply: <ul style="list-style-type: none"> <li>(i) the need of the Authority cannot be met without adaptation of readily available solutions;</li> <li>(ii) they include design or innovative solutions;</li> <li>(iii) specific circumstances related to the nature, the complexity or the legal and financial makeup or because of risks attaching to them;</li> <li>(iv) the technical specifications cannot be established with sufficient precision with reference to a standard, European Technical Assessment, common technical specification or technical reference;</li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>(v) where, in response to an open or a restricted procedure, only irregular or unacceptable tenders were submitted, provided that the Authority includes in the procedure all of, and only, the Candidates that meet certain criteria and submitted tenders in accordance with the formal requirements of the failed procedure</li> </ul>
	<ul style="list-style-type: none"> <li>• <b>Competitive Procedure with</b></li> </ul>

	<p><b>negotiation.</b></p> <p>This procedure can be used for the same reasons as competitive dialogue. With this procedure the Authority can negotiate with Candidates who have submitted tenders to seek improved offers.</p> <p>A formal written contract prepared/approved by the Council's Solicitor must be utilised.</p>
Light Touch Regime	<p>Contracts involving the following supplies and services are subject to a 'light touch' regime if the value of the contract is below the prescribed EU threshold;</p> <ul style="list-style-type: none"> <li>• Health, social and related services</li> <li>• Administrative social, educational, healthcare and cultural services</li> <li>• Compulsory social security services</li> <li>• Benefit services</li> <li>• Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services</li> <li>• Legal services</li> <li>• Other administrative services and government services</li> <li>• Provision of services to the community</li> <li>• Prison related services, public security and rescue services</li> <li>• Investigation and security services</li> <li>• International services</li> <li>• Postal services</li> <li>• Miscellaneous services listed in schedule 3 of the Regulations</li> </ul>
	<p>Advice must be sought from the Procurement Adviser before undertaking a light touch regime procurement.</p> <p>A formal written contract prepared/approved by the Council's Solicitor must be utilised.</p>
Concessions	<p>A Concession contract is an agreement where Suppliers are given the right to exploit works or</p>

	<p>services provided for their own gain. Suppliers can either receive payment for their services solely through third party sources or partly through consideration from the contracting authority along with income received from third parties e.g. a services Concession is where a supplier has a contract to manage an Authority's catering services for its staff. The Authority doesn't pay the Supplier to run the services and its income is solely through the staff using the facilities. The risk in the Concession making a profit is with the Supplier and not the Authority.</p>
Disposal of assets (other than land)	<p>Where the Authority is selling or disposing of assets without the provision of services then the Authority's obligation is to achieve the best value for the items. This could be achieved by obtaining quotes or conducting a full tender depending upon the items being disposed of. Any disposal must be in accordance with the Authority's Finance Rules.</p>
Disposal of Land	<p>These Contract Rules and the Regulations apply where the Authority is disposing of or acquiring land and there is an element of services or works required by the Authority as part of the transfer (E.g. development agreements)</p>

## 6. WAIVERS

- 6.1 Subject to the written approvals referred to in Contract Rule 6.2 below, waivers of any of these Contract Rules shall only be given in the following exceptional circumstances:
- 6.1.1 Where the supplies, works or services are of a unique or specialised nature or are identical or similar to or compatible with an existing provision so as to render only one or two sources of supply appropriate, including:
- an upgrade or
  - where the contract concerns, wholly or mainly, repairs to or the supply of parts for existing proprietary machinery, plant or equipment and the repairs to or the supply of parts cannot be carried out practicably by alternative Suppliers;
- or
- 6.1.2 The supplies to be purchased are proprietary articles or are sold only at fixed prices; or
- 6.1.3 The price of services, supplies to be purchased is controlled by trade organisations, or if for other reasons there would be no genuine competition; or
- 6.1.4 Where in the opinion of the Authorised Officer in consultation with the s151 Officer and the Council's Solicitor considers that the services to be provided or the work to be executed or the supplies to be purchased are urgent (subject to the action being reported to the next Executive Committee Meeting) or
- 6.1.5 Specialist consultants, solicitor, barrister, agents, artist or professional advisers are required and:
- There is no satisfactory alternative; or
  - Evidence indicates that there is likely to be no genuine competition; or
  - It is, in the opinion of the Authorised Officer, in the Authority's best interest to engage a particular consultant, solicitor, barrister, agent, artist or adviser;
- or
- 6.1.6 Where the Authority is purchasing a property, or is taking a service back in-house, which has associated contracts and in the opinion of the Authorised Officer it is in the Authority's best interests to take on those contracts; or
- 6.1.7 The works to be executed or the supplies to be provided are required by, or can only be carried out or supplied, by a statutory body.

- 6.2 These Contract Rules cannot be waived for the procurements above the relevant EU Threshold.  
Where it is possible to waive these Contract Rules, any such waiver must be agreed by:
- 6.2.1 Executive Committee for contracts above £100,000.00 or, if the matter requires an urgent decision and a meeting of the Executive Committee cannot be called, the Head of Paid Service in consultation with the Leader of the Authority. The action taken in this way shall be reported to the next ordinary meeting of the Executive Committee; or
- 6.2.2 The Budget Holder, in consultation with the Section 151 Officer and the Council's Solicitor if the contract is £100,000.00 or less.
- 6.3 A record of the decision and the reasons for it shall be kept and the waiver itself shall be kept by the Council's Solicitor.

### **SECTION 3: TENDERING AND QUOTATION PROCESS**

#### **7 ADVERTISING (above £10,000.00)**

- 7.1 Adverts shall include as a minimum:
- Date and time response to be received by the Authority;
  - How and to whom the Supplier must respond; and
  - Any requirements for participating in the procurement.
- 7.2 Where adverts are placed on Contract Finder unrestricted and full direct internet access to relevant contract documents shall be available on the Authority's website and (when purchased) the Authority's e-procurement system free of charge when the advert is placed.
- 7.3 Opportunities with a value over the relevant EU Threshold must also be advertised in the Official Journal of the European Union (OJEU) by submitting a Contract Notice.

#### **8. SUITABILITY ASSESSMENT (under EU threshold) AND PRE-QUALIFICATION (above EU threshold only)**

- 8.1 Authorised Officers are responsible for ensuring that all Candidates for a contract are suitably assessed.

## **Under EU Threshold**

8.2 As part of the tender or quotation process Authorised Officer shall establish that the potential Candidates meet minimum requirements or minimum standards of:

- Suitability;
- Capability;
- Legal status; and
- Financial standing.

8.3 The assessment questions must be

- relevant to the subject matter of the procurement; and
- proportionate.

8.4 For works contracts above the lower EU threshold (Supplies and Services level) a Pre-Qualification Questionnaire (PQQ) stage is permitted. Officers must use form PAS91. Form PAS91 must also be used for supplies and services contracts related to the works

## **Above EU Threshold**

8.5 Procurements above the supplies and services EU threshold can use a Pre-Qualification Questionnaire (PQQ) stage. Officers must use the PQQ form issued by the Government and, for works contracts, (including the procurement of supplies and services needed in relation to the works) form PAS91. As any deviations from the standard form must be reported to the Cabinet Office changes to the form are not permitted without the consent of the Procurement Adviser in consultation with the S151 Officer and the Council's Solicitor.

8.6 Any Candidate eliminated from a procurement where a PQQ has been undertaken must be notified following the evaluation of that stage in the process.

8.7 Financial and due diligence checks must be undertaken for all contracts where the value of the contract is above £10,000.00.

8.8 Any procurement subject to the Regulations shall comply with the appropriate Regulations.

## **9. ELECTRONIC TENDERING**

9.1 On 18 October 2018 electronic procurement and electronic communications became compulsory for above EU Threshold procurements. Except in the limited circumstances contained in the Regulations, all communication and information exchange, including electronic submission of tenders, shall be performed using electronic means of communication in accordance with the requirements of the Regulations.

- 9.2 For above EU Threshold procurements the decision not to use electronic tendering can only be made by the Awarding Officer following consultation with the Procurement Adviser and the Council's Solicitor. The reason for using other methods of communication must be set out in the Regulation 84 Report.
- 9.3 For below EU Threshold Procurements, the Authorised Officer may carry out an electronic procurement through the Authority's e-procurement system (once purchased) or otherwise.
- 9.4 The Authorised Officer may, following consultation with the Procurement Adviser and the Council's Solicitor carry out an electronic auction where satisfied that it is in the interests of the Authority to do so

## 10 **DIVIDING TENDERS INTO LOTS**

- 10.1 Authorised Officers may decide to award a contract in the form of separate lots and may determine the size and subject-matter of such lots.
- 10.2 For an above EU threshold procurement, if the contract is not split into lots the main reasons for this decision shall be included in the procurement documents and the Authority's report under Regulation 84 of the Regulations.
- 10.3 Authorised Officers shall include in the notice and or tender documents:
- 10.3.1 if tenders can be submitted for one, for several or for all of the lots
  - 10.3.2 if there is a limit on the numbers of lots that can be tendered for.
- 10.4 Where more than one lot may be awarded to the same Candidate, Awarding Officers may award contracts combining several or all lots where they have specified in the contract notice or in the invitation to tender that they reserve the possibility of doing so and indicate the lots or groups of lots that may be combined.

## 11. **INVITATION TO TENDER**

- 11.1 The Invitation To Tender shall state that no Tender will be considered unless it is received by the date and time stipulated in the Invitation To Tender. Subject to Contract Procedure Rule 11.3 below, no Tender delivered in contravention of this Contract Procedure Rule shall be considered.
- 11.2 All Invitations To Tender shall be in accordance with these Contract Rules, and any codes and policies.

11.3 No Tenders received after the specified date and time for receipt of Tenders shall be accepted or considered by the Authority unless the Authorised Officer, after consulting the Procurement Adviser, s151 Officer and the Council's Solicitor, is satisfied that there is sufficient evidence for the Tender having been despatched in sufficient time for it to have arrived before the closing date and time.

## 12. **SUBMISSION AND OPENING OF TENDERS AND QUOTES**

12.1 Tenders and Quotes shall be submitted in accordance with requirements set out in the Invitation to Tender or Quote as appropriate. Procurement documentation should state that the Authority reserves the right to reject a Quote or Tender if the requirements are not complied with.

### 12.2 **Tenders (over £50,000.00)**

All Tenders received shall be addressed to the Council's Solicitor c/o Democratic Services in a plain sealed envelope endorsed with the words "Tender – Do Not Open" followed by the subject matter to which it relates (but no other name or mark indicating the sender).

12.3 Hard copy tenders shall be opened by at least one officer nominated by the Budget Holder and a Democratic Services Officer or their nominated officer. An immediate record shall be made of the Tenders received including names, amount of tender and the date and time of opening.

12.4 Where Tenders are submitted electronically, the Authorised Officers shall ensure that they are kept secure and not opened until the specified time and date for their opening.

### **Quotes (over £10,000.00 and up to £50,000.00)**

12.5 All Quotes received shall be addressed to the Authorised Officer in a plain sealed envelope endorsed with the words "Quote – Do Not Open" followed by the subject matter to which it relates (but no other name or mark indicating the sender). Quotes shall be kept in a safe place by the Authorised Officer and remain unopened until the time and date specified for their opening.

12.6 Quotes shall be opened by the Authorised Officer who shall keep a note on file of the names, amount of tender and the date and time of opening.

12.7 If the submission of Quotes is electronically, the Authorised Officer shall ensure that the Quotes are kept secure and not opened until the time and date specified for their opening.

12.8 No Tenders or Quotes received after the specified date and time for receipt shall be accepted or considered by the Authority unless the Authorised Officer, after consulting the s151 Officer and the Council's Solicitor, is satisfied that there is sufficient evidence for the Tender or Quote having been despatched in sufficient time for it to have arrived before the closing date and time.

13. **ARITHMETICAL ERRORS, POST TENDER CLARIFICATION AND ABNORMALLY LOW TENDERS**

13.1 Candidates can only alter their Tenders or Quotes after the date specified for their receipt but before the formal acceptance of the Tender or Quote, where examination by officers of the Tender or Quote reveals arithmetical errors or discrepancies which affect the Tender or Quote figure. The Candidate shall be given details in writing of such errors or discrepancies and afforded an opportunity of confirming, amending or withdrawing their offer in writing.

13.2 In an EU Procurement the Authority must require Candidates to explain the price of costs proposed in the tender where the tender appears to be abnormally low in relation to the works, supplies or services.

13.3 All other post-tender clarifications shall:

13.2.1 only be undertaken following consultation with the Procurement Adviser and the Council's Solicitor; and

13.2.2 not disclose commercially sensitive information supplied by other Candidates for the contract

13.4 The Authority does not accept qualified or conditional quotes/tenders. Where a Candidate has submitted a qualified or conditional quotation/tender Authorised Officers, in consultation with the Procurement Adviser, must give Candidates the opportunity to withdraw the qualification or condition without amendment to the bid submitted.

14 **TENDER EVALUATION**

14.1 Tenders shall be evaluated in accordance with the relevant regulations and the award criteria set out in the Invitation to Tender.

14.2 All contracts shall be awarded on the basis of the offer which represents the most economically advantageous, taking into account price and/or quality, to the Authority.

14.3 The award criteria shall be predetermined and listed in the Invitation to Tender documentation. In addition, the criteria shall be strictly observed at all times throughout the contract award procedure by any officer involved in the tender evaluation.

14.4 For all Contracts regardless of value, no person with a personal or financial

interest in any of the Candidates submitting a proposal should be involved in any way in influencing the decision as to which Supplier is to be awarded the Contract. A declaration of interest form must be completed by each officer involved in the evaluation process and held on file by the Authorised Officer.

14.5 Where Authorised Officers intend to carry out site visits, presentations or interviews as part of the evaluation process, this must be made clear in the invitation to tender and include whether this will be scored separately to the tender submission or used to moderate scores. If scored separately, Candidates must be informed of the evaluation criteria and weighting in the Tender documents.

## 15. **AWARDING CONTRACTS**

15.1 The Authority shall only accept a tender and award a contract to the Candidate submitting the Most Economically Advantageous Tender/Quote

15.2 Depending on what is being procured and whether or not it is an EU procurement, the Most Economically Advantageous Tender/Quote can be assessed as follows;

- Price (i.e. the lowest bid)
- Cost (where the assessment is based on cost-effectiveness basis such as an asset life-cycle assessment (cost of the asset, maintenance costs, end of life costs)
- Best Price/Quality Ratio. (the award criteria can include quality, including technical merit, aesthetic and functional characteristics, delivery date, delivery process, after-sales service and technical assistance as well as environmental and/or social matters and any other matters relevant to what is being procured.

The award criteria and the scoring methods must be disclosed in the Invitation to Tender/Quote.

15.3 A contract may only be awarded by an Awarding Officer with the requisite delegated authority to award contracts. Prior to award, the Authorised Officer should ensure that the Budget Holder responsible for the contract has sufficient funds in place to sustain the contract.

15.4 For contracts of a value of £25,000 or above, regardless of whether the contract award opportunity was advertised, a contract award notice containing the name of the Supplier, the date the contract was entered into and the value of the contract must be published on Contract Finder no later than 90 days after contract award. If below EU Threshold include whether or not the Supplier is a Small and Medium-sized Enterprise (SME) or voluntary, community and social enterprise (VCSE).

15.5 A Contract Award Notice must be published in OJEU where there has been an above EU Threshold Procurement and the relevant standstill period observed. The contract shall not be completed or Purchase Order issued unless the standstill period passes with no challenges. Authorised Officer shall notify the Procurement Adviser and the Council's Solicitor immediately following receipt of a challenge.

15.6 For contracts over £10,000.00 the Purchase Order shall not be issued until the formal written contract has been completed.

## 16. **DEBRIEFING**

16.1 The Authorised Officer shall provide a written debriefing to unsuccessful Candidates as required by the law.

## **SECTION 4: CONTRACT FORMALITIES**

### 17 **EXECUTION OF CONTRACTS**

17.1 All contracts not exceeding £10,000.00 shall be signed by the relevant Budget Holder, unless the Council's Solicitor requires that the contract be sealed.

17.2 All contracts exceeding £10,000.00 but not exceeding £50,000.00 shall be signed by the Council's Solicitor or other authorised officer as set out in the Authority's constitution unless the Council's Solicitor requires that the contract be sealed.

17.3 Unless the Council's Solicitor considers it more expedient to sign the contract, all contracts exceeding £50,000.00 shall be executed as a deed by the Council's Solicitor or other authorised officer as set out in the Authority's constitution and the common seal affixed to the contract.

### 18. **RECORDS OF TENDERS AND CONTRACTS**

18.1 The Procurement Adviser shall maintain a list of all Tenders received.

18.2 Authorised Officers must ensure that contracts awarded over £5,000 are entered onto the Contracts Register kept by the Authority and maintained by the Procurement Adviser.

18.3 All contracts over £10,000.00 shall be kept by the Council's Solicitor.

### 19. **BONDS AND PARENT COMPANY GUARANTEES**

19.1 Bonds or Parent Company Guarantee will be required on all works contracts above £1,000,000.00 unless considered inappropriate by the Section 151 Officer following consultation with the Council's Solicitor.

19.2 Bonds or Parent Company Guarantee may be required for any contract if considered appropriate by Section 151 Officer following consultation with the Council's Solicitor.

19.3 Bonds shall be a minimum of 10% of the contract value.

## 20. **EMBEDDED LEASES AND EMBEDDED DERIVATIVES**

20.1 Prior to the award of a contract the Authorised Officer must notify the S151 officer where under the contract:

20.1.1 the Authority will have use or control of or will be paying for the use of a specific asset or group of assets; or

20.1.2. contains a clause that caps the price the Authority has to pay for supplies or services or there is floor price on the price the Authority has to pay for supplies or services; or

20.1.3 the prices the Authority has to pay under the contract, increase by more than 2 times RPI; or

20.1.4 the prices the Authority has to pay, increase by some other form of Indices or commodity price.

## **SECTION 5: SPECIFIC TYPES OF TENDERING**

### 21 **FRAMEWORK AGREEMENTS**

#### **FRAMEWORK AGREEMENTS SET UP BY OTHER CONTRACTING AUTHORITIES**

21.1 External Framework Agreements, where the Authority is named or identified as part of a class of permitted users, can be used where the Authority wishes to contract for the sourcing of supplies, services or works without conducting a full procurement exercise.

21.2 The Framework Agreement may include within its terms a requirement for an abbreviated competitive exercise ("mini competition") between some or all of those Suppliers who are parties to the Framework Agreements and can provide the supplies/services/works being tendered. Other Framework Agreements may allow for a direct award or the choice of either direct award or mini completion. Any purchase from a Framework Agreement shall be made in accordance with the procedure set out in the Framework Agreement.

21.3 The approval of the Procurement Adviser or Council's Solicitor shall be sought before signing up to a new Framework Agreement.

- 21.4 A Call-Off contract as set out in the Framework Agreement will need to be entered into. If no pre agreed contract is provided for in the Framework Agreement a contract drafted or approved by the Council's Solicitor, shall be entered into.

#### **FRAMEWORK AGREEMENTS SET UP BY THE AUTHORITY**

- 21.5 The Authority may carry out procurement exercises to set up Framework Agreements to allow it to choose suppliers who meet its pre-qualification requirements. The Authority can then Call-Off Suppliers from the Framework Agreement in accordance with the rules of the Framework Agreement. This could be useful where the Authority has need to call on Contracts urgently or often. The Authority could also set up a Framework Agreement for itself and other local authorities to use in order to make efficiency savings.
- 21.6 Once a Framework Agreement is established, Quotes and Tenders for contracts may be invited from Suppliers included on the Framework Agreement. The total value of such contracts must not exceed the financial limit stated in the Framework.
- 21.7 The Authority will need to carry out a procurement exercise to set up the Framework Agreement and to select the Suppliers to include on the it. This procurement will need to be advertised in accordance with these Contract Rules and the Regulations. The total contract value limit referred to in paragraph 21.7 above shall be determined by the anticipated level of spend per Framework Agreement.

#### **PUBLISHING THE AWARD OF CALL-OFF CONTRACTS UNDER ALL FRAMEWORK AGREEMENTS**

- 21.8 The call off of a contract under a Framework Agreement with a value of £25,000.00 or over shall be published on Contract Finder.

#### **22. DRAW DOWN AGREEMENTS**

- 22.1 Authorised Officers may award Draw Down Agreements to individual suppliers where services, supplies or works are required on an ad hoc basis. E.g. JCT Measured Terms agreements. More than one Draw Down Agreement may be awarded to different Suppliers for the same services supplies or works.
- 22.2 Authorised Officer shall carry a procurement process for the award of the Draw Down Agreement in accordance with these Contract Rules and the Regulations.

23. **COLLABORATIONS AND JOINT PROCUREMENT**

23.1 The Authorised Officer may participate in any collaborative or joint procurement arrangements with other Local Authorities or public bodies including membership or use of a Purchasing Consortia subject to the prior approval of the relevant Director and the Procurement Adviser.

24. **PROCUREMENT BY CONSULTANTS**

24.1 Any consultants used by the Authority shall be appointed in accordance with these Contract Rules and the Regulations. The Authorised Officer shall ensure that the consultant's performance is monitored.

24.2 Where the Authority uses consultants to act on its behalf in relation to any procurement, then the Authorised Officer shall ensure that the consultant carries out any procurement in accordance with these Contract Rules and the Regulations.

24.3 Consultants may advise the Authorised Officer as to the most suitable candidate. The Authorised Officer can use the advice given by the Consultant to make their recommendation to the Awarding Officer.

24.4 No Consultant shall make any decision on whether to award a contract or who a contract should be awarded to. This decisions rests with the Awarding Officer who shall sign the Tender Acceptance Form or waiver.

25 **NOMINATED AND NAMED SUB-CONTRACTORS**

25.1 Tenders for sub-contracts to be performed or supplies to be provided by nominated suppliers shall be dealt with in accordance with the provisions of these Contract Rules.

**SECTION 6**

**AMENDMENTS TO CONTRACTS DURING THEIR TERM AND CONTRACT MANAGEMENT**

26 **AMENDMENTS TO CONTRACTS**

**Above EU Threshold Contracts**

26.1 An above EU Threshold Contract or Framework Agreement can only be changed if permitted by the Regulations. Regulation 72 sets out the circumstances when changes can be made without a new procurement being required. Advice must be sought from the Council's Solicitor before making any changes to an above EU Threshold Contract or Framework Agreement.

## Below EU Threshold Contracts

26.2 In limited circumstances, having had regard to the Regulations and following consultation with the Council's Solicitor, the Awarding Officer may authorise changes to be made to below EU threshold contracts.

## 27 CONTRACT MANAGEMENT

27.1 Authorised Officers need to actively monitor and manage a Supplier's performance throughout the contract life to ensure milestones, KPI's, deliverables and outcomes are achieved. Risk and, where appropriate, business continuity shall be managed as detailed in the tender and Contract documentation. Management data needs to be published in accordance with the Government's Transparency Code.

27.2 Plans should be made well in advance to re-procure the contract (if applicable) and an exit strategy included in the tender and procurement documentation and the contract.

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### DEFINITIONS

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<b>Authorised Officer</b>	Authorised Officers are persons responsible for carrying out the procurement in question and who have received corporate training on these Contract Rules, the Regulations and the Procurement Code
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<b>Awarding Officer</b>	The officer with the delegated authority to award the contract
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<b>Best Value for Money</b>	The best solution for the Authority taking into account price, quality and deliverability.
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<b>Bond</b>	An insurance policy: if the Supplier does not do what it has promised under a contract with the Authority, the Authority can claim from the insurer the sum, of money specified in the bond (often 10% of the contract value). A bond is intended to protect the Authority against a level of cost arising from the Supplier's failure.
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<b>Budget holder</b>	The officer responsible for the budget for the relevant procurement
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<b>Candidate</b>	Any person who asks or is invited to submit a Quote or Tender.
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<b>Call-Off Contract</b>	A contract awarded to a supplier under a Framework Agreement
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<b>Concession contract</b>	An agreement where Suppliers are given the right to exploit works or services provided for their own gain.
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<b>Consultant</b>	Someone appointed (but not under a contract of employment) for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role.
<b>Contracting Authorities</b>	Bodies which are subject to the Regulations.
<b>Council's Solicitor</b>	The senior legal Adviser for the Authority
<b>Director</b>	The chief officers for the Authority, director or the Council's Solicitor
<b>Draw down contract</b>	A contract with a single supplier where supplies, services or works are requested on an ad hoc basis
<b>EU Threshold</b>	The values set by the European Commission (or such other Governmental or Regulatory body) which determine whether a procurement has to be carried out in accordance with the Regulations.
<b>Framework Agreement</b>	An agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
<b>Head of Paid Service</b>	The officer designated as Head of Paid Service for the Authority under section 4 of the Local Government and Housing Act 1989
<b>Invitation to Tender (ITT)</b>	Invitation to tender documents in the form required by these Contract Rules.
<b>Most Economically Advantageous Tender</b>	The most economically advantageous tender will be evaluated on the basis of either <ul style="list-style-type: none"> <li>• Price (i.e. the lowest price)</li> <li>• Cost (on the basis of a cost-effectiveness approach e.g. life-cycle costing)</li> <li>• Best price/quality ratio</li> </ul>
<b>OJEU</b>	Official Journal of the European Union – where notices for all above EU Threshold procurements opportunities and contract awards must be placed.
<b>PAS 91</b>	Means the Publicly Available Specification 91 prequalification questionnaire published by the British Standard Institute for contracts for works and associated services and supplies (or such other document mandated for use by the Government).
<b>Parent Company</b>	A contract which binds the parent of a subsidiary company

<b>Guarantee</b>	as follows: if the subsidiary company fails to do what it has promised under a contract with the Authority, the Authority can require the company to do so instead.
<b>Procurement Adviser</b>	The procurement officer for the Authority
<b>Quote</b>	A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).
<b>Regulations</b>	Means the Public Contracts Regulations 2015, Concession Contracts Regulations 2016, Utilities Contracts Regulations 2016 or any other UK legislation regulating procurements by Local Authorities (as may be amended, modified or replaced from time to time)
<b>Regulation 84 Report</b>	The report about the procurement required to be compiled under Regulation 84 of the Regulations
<b>Section 151 Officer</b>	The officer designated responsibility for the proper administration of the Authority's financial affairs under section 151 of the Local Government Act 1972
<b>Supplier</b>	A person or body of persons providing, or seeking to provide, supplies, services or works to the Authority.
<b>Tender</b>	A Candidate's proposal submitted in response to an Invitation to Tender.

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