

19 Contract rules

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18. Finance rules

19.1 When do these rules apply?

These rules apply when the council is engaged in the process of entering into any contract under which it expects to pay or receive money or payments in kind. They apply to both capital and revenue and cover:

- contracts for goods, works or services
- acquisitions and disposals of land or buildings.

The board can waive any of these rules after seeing and approving a report from the head of service giving reasons (but the board must ensure that all contracts comply with national and EU law.)

These rules do not apply to grant giving – the rules for this are in the council's grants prospectus.

19.2 Other relevant guidance, rules and law

Attention should also be paid to:

- the finance rules (Section 18)
- the budget and policy framework procedures (Section 16)

- Section 4 of this constitution (Who carries out executive responsibilities?) and Section 5 (Who carries out council responsibilities?)
- national and EU procurement law and guidance.

Heads of service must consider the corporate governance arrangements and legal issues when entering contracts and must ensure the risks are fully assessed.

19.3 Responsibility to follow these rules and relevant law

These rules apply to officers and anyone else managing or supervising contracts on behalf of the council. Heads of service must make sure their staff follow them.

The council may take disciplinary and/or legal action against anyone who fails to comply with these rules or the relevant national or EU law.

19.4 Interests of councillors and officers in contracts

(a) Avoiding conflicts of interest

Councillors, officers and anyone acting for the council must avoid conflicts of interest.

(b) Councillors' interests

Councillors must follow the members' code of conduct (Section 22). In addition it is a criminal offence for a councillor not to declare a financial interest in a contract.

(c) Officers' interests

Officers must declare any interests in contracts. It is a criminal offence for an officer not to declare a financial interest in a contract. (This does not apply to an officer's own contract of employment or their tenancy of a council house.)

The Head of Law and Governance will record officers' financial interests in a book that Councillors can look at during office hours.

(d) Officer reports and advice

If an Officer writes a report for a meeting on something they have an interest in, they must give a brief description of the interest in a separate paragraph at the beginning of the report.

If an Officer advises full council or the Board or a Committee or a single Member on something they have declared an interest in, they must make reference to their interest.

19.5 Before a contract is agreed

Contracts can only be agreed if they comply with these contract rules and:

- they will help a service area to achieve its service objectives

- the council has the legal power to enter into the contract
- there is a budget to cover the cost
- project approval has been obtained where appropriate – see [18.12](#)
- the total contract value has been calculated – see [19.6](#)
- the contract gives best value for the council.

19.6 Total contract value

The total contract value is the total amount (excluding VAT) that is expected to be paid to the supplier as a result of the contract award during the whole term of the contract. It includes:

- the value of anything the council is getting for free as part of the contract or which is charged onto a third party.
- any amount that could be paid by extending the contract (if there is a contractual right to extend it).

If the length of a contract is unspecified, its total value will be calculated on the basis of the contract having a duration of 48 months.

A single contract must not be artificially split into smaller contracts to get around these contract rules or the law.

19.7 Sub-contracting

Where in a particular contract the main contractor intends to appoint one or more sub-contractors to discharge some or all of its contractual obligations, the main contractor must be placed under an obligation to so inform the council, and the council's Head of Finance shall consider whether in each case a collateral warranty from the sub-contractor in favour of the council is required.

19.8 Format of contracts

All contracts must be in writing.

Contracts with a total contract value over £100,000 must be sealed (see 21.3). Contracts under £100,000 must be signed by two officers – the relevant Head of Service (or an officer authorised by the head of service) and a member of the Procurement Team.

Contracts over £100,000 must be in a form approved by the Head of Law and Governance.

Contracts over the EU threshold must comply with relevant EU procurement law and guidance.

19.9 Clauses that must be included in all contracts

Contracts must:

- say what is to be supplied or done, the timescale for performance and standards of performance required.
- say how much is to be paid and include any terms for deductions, discounts or penalties
- give the period of the contract
- require contractors to meet any standards set by the head of service and any appropriate BSI British standards or EU equivalents (EU standards must be included if the total contract value is over the EU threshold)
- require contractors to follow any appropriate codes of practice
- require the contractor to hold appropriate insurance cover – the level of indemnity will be set by the head of service after assessing the risk and consulting with the council's insurance officer if necessary, however this cover must include a minimum of £5m public liability insurance, unless a lower level of cover has been agreed by the Head of Finance.
- include any other conditions and terms that have been agreed.

19.10 Clauses that must be included in contracts over £100,000

Contracts with a value over £100,000 will include all the following clauses unless the Head of Law and Governance thinks they are inappropriate:

- (a) a clause allowing the council to cancel the contract and recover any resulting losses from the contractor if it discovers that:
- the contractor or its employees have given, offered or promised anything to influence how the council awarded or managed the contract
 - the contractor or its employees have committed an offence under the Prevention of Corruption Acts 1889-1916
 - the contractor or its employees have given anything that Section 117(2) of the Local Government Act 1972 forbids officers from accepting
- (b) a clause requiring the contractor to :
- provide at least £5,000,000 public liability insurance indemnity or any other level of cover recommended by the Head of Finance
 - provide at least £5,000,000 employer liability insurance indemnity or any other level of cover recommended by the Head of Finance
 - provide at least £1,000,000 professional indemnity insurance or any other level of cover recommended by the Head of Finance
 - produce proof of insurance (for example copies of the insurance certificates) if the Head of Service thinks it necessary

- provide a bond (or other suitable form of guarantee) for 10 per cent of the contract value if the Head of Finance thinks it necessary
- (c) a clause saying who will supervise the contract on behalf of the Council and deal with any necessary changes to its terms
- (d) a clause requiring the contractor to protect the health and safety of anyone affected by its work
- (e) a clause requiring the contractor to comply with data protection laws and help the council to comply with its duties under the Freedom of Information Act
- (f) a clause requiring the contractor to get the Council’s permission before subcontracting or transferring any of the contract
- (g) a clause giving the Council the right to end the contract if the contractor does not meet the Council’s standards and timescales and to bill the contractor for :
- the administrative costs of finding and appointing a new contractor, and
 - any amount by which the new contract exceeds the old one
- (h) if the Head of Service considers it necessary, a clause stating the level of liquidated damages to be paid if the contractor is in breach of contract, such level to be a genuine pre-estimate of the loss suffered.

19.11 Thresholds for quotes and tenders

The Council is seeking to ensure that all purchases made are undertaken through a single electronic tendering system (“the Selected System”). The Head of Business Improvement will provide details of the Selected System and any changes to it. All purchases of goods, services or works with a value in excess of £1,000 must, therefore, be undertaken through the Selected System. All such purchases shall also comply with the thresholds for quote and tender provisions as set out below. Exemption from using the Selected System can only be obtained with the consent of the Head of Business Improvement.

For all contracts over £100,000 a financial appraisal will be undertaken by the Head of Finance. The relevant Head of Service must not commission any work from the supplier until the contract has been approved by the Head of Finance and a named contract manager has been appointed.

Heads of Service must consider advertising all contracts up to £100,000.

Total value of contract	Quotes or tendering
>£1000 <= £10,000	Seek at least two quotes, at least one of which must be from a local supplier
>£10,000 <= £50,000	Seek at least three quotes, at least one of which must be from a local supplier

>£50,000 < =£100,000	Seek and get at least four quotes, at least one of which must be from a local supplier
Over £100,000	Tendering (EU procurement law and guidance must be followed for contracts over EU thresholds)

'Local supplier' means a supplier who provides significant local benefits to the community, particularly through employing staff. An example would be a locally owned and independent enterprise.

All quotes must be held by the Head of Service for 12 months after the renewal of the contract.

19.12 When is there no need to seek quotes or tenders?

(a) Emergencies

If there is an emergency or a disaster, the Chief Executive or anybody authorised by him/her can approve spending outside these rules after consulting the Director of Finance and Efficiency or anybody authorised by him/her. The Leader must be told as soon as possible.

(b) Written approval of head of finance and head of business improvement

Heads of Service do not have to seek or obtain quotes for contracts with a value of £100,000 or less if after submitting an explanatory report to the Head of Finance and the Head of Business Improvement, these Officers have given their written approval to waive the requirement to seek or obtain quotes on the basis that to do so would create no overall economic benefit to the Council.

(c) Purchasing consortiums

Heads of Service do not have to get quotes or go out to tender if they have used a purchasing consortium that can show it follows the law and good procurement practice.

19.13 Tendering of contracts over £100,000

If the total contract value is over £100,000, tenders must be sought. (Tenders can also be sought for lower contract values.) Tendering can be by, open tendering (19.14), restricted tendering (19.15), negotiated tendering (19.16) or other EU procurement methods (19.17). Whichever method of tendering is selected paragraphs 19.19, 19.20, 19.21 and 19.22 will apply.

19.14 Open tendering

- (a) A Head of Service can decide to get tenders for a contract by open competition.
- (b) The Council will publish a public notice:
 - on the council's website and e tendering portal

- if the total contract value is above the relevant EU threshold, in the Official Journal of the European Union – the notice will need to comply with EU regulations.

(c) The notice will:

- say what the contract is for
- say where to get the tender documents from
- give the deadline for tenders.

The notice must be published at least 14 days before the deadline for tenders. If the total contract value is above the EU threshold, EU rules must be followed. These require the notice to be published at least 52 days before the deadline for tenders.

19.15 Restricted tendering

(a) A head of service can decide to limit the right to tender to people and organisations on a shortlist.

(b) In order to compile the shortlist the council will publish a notice:

- on the council's website and e tendering portal
- if the total contract value is above the EU threshold, in the Official Journal of the European Union – the notice will need to comply with EU regulations.

(c) The notice will:

- say what the contract is for
- describe how to express interest in tendering
- give the deadline for tender

The notice must be published at least 14 days before the deadline for expressions of interest. If the total contract value is above the EU threshold, EU rules must be followed. These require the notice to be published at least 37 days before the deadline for expressions of interest.

(d) After the deadline for expressions of interest, invitations to tender will be sent to:

- at least five people or organisations who expressed an interest in tendering – these will be selected by the head of service, either generally or for a particular contract or category of contracts
- if fewer than five people or organisations are considered suitable by the head of service, all the ones that are considered suitable.

19.16 Negotiated tendering

(a) Total contract value below the EU threshold

For contracts below the EU threshold that have been tendered, the head of finance can allow a Head of Service to negotiate with one or more contractors on terms.

(b) Total contract value above the EU threshold

The EU negotiated procedure can only be used in very limited circumstances and in the main has been replaced by the competitive dialogue process.

19.17 Other EU procurement methods

The following procedures can be used for individual contracts if the Head of Business Improvement agrees:

(a) Competitive dialogue

This can be used for complex contracts. It allows the Council, through dialogue with providers, to develop the optimum contract valuation.

(b) Framework agreements

These are arrangements between the Council and providers that set terms for any contracts between them. Framework agreements are for a set period and should not normally be for more than four years.

(c) eAuctions and eProcurement

eAuctions are electronic auctions where providers bid against each other to offer the lowest price. They are open to any provider that meets certain conditions and include all tenders that meet the specification. eProcurement covers a range of electronic procurement methods.

(d) Framework agreement or one-off contract set up by another public organisation

This can be used if the public organisation has been the lead organisation in setting up the framework agreement or contract and has acted within national and EU law and the Council can properly join the contract.

(e) Public auction

This can be used for buying or selling land.

(f) Purchasing consortiums

Purchasing consortiums must be able to show that they follow EU procurement rules.

19.18 Acquiring and disposing of land and buildings

- (a) This rule applies to acquisitions and disposals of:

- freeholds or leaseholds with a consideration or premium over £500,000
 - leases with a rental value over £125,000 per annum
 - freeholds and leases for less than best consideration except when the acquisition or disposal is made:
 - under a legal duty
 - under a confirmed compulsory purchase order
 - under a scheme that has already been agreed by the board for acquiring or disposing of more than one piece of land or more than one building.
- (b) Before any tenders are invited for disposals or any provisional agreement is reached in negotiations on acquisitions or disposals, a report must go to the Board or a single Executive Member covering:
- the Council's present or most recent use of the land or buildings
 - other uses the Council could make of the land or buildings
 - how the buyer plans to use the land or buildings
 - other uses a buyer could make of the land or buildings
 - the estimated value of the land or buildings
 - how the land or buildings will be disposed of.
- (c) Tenders for acquisition or disposal of property are not required to be submitted through the Council's e-tendering portal but must be held securely until after the tender deadline and opened after the deadline by two Officers nominated by the Head of Corporate Assets.
- (d) After a provisional agreement has been reached on an acquisition or disposal, another report must go to the Board or single Executive Member covering the terms of the disposal or acquisition and how the land or buildings will be used. If a disposal is for less than best consideration, the report must say why and whether consent is needed from the Secretary of State.

19.19 Submitting a tender

- (a) Every tender must include a declaration that the tenderer has not:
- told anyone except the Council the amount of the tender
 - changed the amount of the tender as part of an agreement with anyone
 - lobbied councillors or officers about the tender.
- (b) Invitations to tender must be submitted via the Council's e-tendering portal.

19.20 Council's handling of tenders received through portal

- (a) Each tender received via the portal is automatically date and time stamped. The tender cannot be accessed until after the tender deadline.
- (b) Tenders received after the deadline will be disqualified.
- (c) The Head of Business Improvement will return disqualified tenders promptly. The Head of Business Improvement can open a disqualified tender to find out the name and address of the tenderer but must not pass on any details of the tender.

19.21 Opening tenders

- (a) All the tenders for a contract will be opened via the portal after the tender deadline.
- (b) Tenders will be opened by an authorised member of the procurement team and passed to the relevant Head of Service who invited them.
- (c) If a tender includes a condition that was not in the tender documents and accepting the condition would give the tenderer an unfair advantage over other tenderers, the tenderer must remove the condition or withdraw the tender.
- (d) If there seems to be a mistake in a tender, the tenderer will be asked to confirm that there is no mistake or withdraw the tender. This does not apply to arithmetical errors, which can be corrected by the Head of Service.
- (e) The Council must not negotiate with any tenderer outside the negotiated tendering procedure (19.16).
- (f) Documents from unsuccessful tenderers must be kept by the Head of Service who invited them for 12 months after the start of the contract.

19.22 Accepting quotes and tenders

(a) Total contract value less than £150,000

A Head of Service or Director can accept the lowest or most economically advantageous quote or tender if the Council is the buyer, or the highest if the Council is the seller, as long as:

- the spending is included in the council's capital or revenue budget
- project approval has been obtained
- any key decisions have been included in the forward plan
- any organisation the council is acting as agent for agrees.

(b) Total contract value of £150,000 or over but less than £500,000

A Director can accept the lowest or most economically advantageous tender if the Council is the buyer, or the highest if the Council is the seller, as long as:

- the spending is included in the Council's capital or revenue budget
- project approval has been obtained
- any key decisions have been included in the forward plan
- any organisation the Council is acting as agent for agrees and
- the Director of Finance and Efficiency, the Monitoring Officer and the Chief Executive have been consulted.

(c) Total contract value £500,000 or over

Tenders of £500,000 or over can only be accepted by the City Executive Board after considering a written report.

19.23 Copies of contracts and register of contracts

(a) Keeping copies of old contracts

If the total contract value is over £10,000, the Head of Business Improvement will keep the contract in a secure place:

- for at least seven years from their end date if they were signed
- for at least 13 years from their end date if they were sealed,

but the Head of Service who invited the contract will still be responsible for managing it.

(b) Keeping a register of contracts

The Head of Business Improvement will keep a central register of contracts over £10,000.

All Heads of Service are required to provide the original of all contracts over £10,000 to the Head of Business Improvement.

(c) What will the register record?

For each contract, the register will record:

- what the contract is for
- the total contract value
- the name of the contractor
- the start and end dates
- the procurement method used
- whether the contract can be extended and how.

(d) Access to the register of contracts

Members of the public have the right to see the register of contracts.

(e) Register of certified contracts

The Monitoring Officer will keep a register of all certificates issued under the Local Government (Contracts) Act 1997.

19.24 Legal claims relating to contracts

Claims by contractors will be considered promptly by the Head of Service. Heads of Service must consult the Head of Law and Governance before agreeing to anything that could make the Council liable for more than £5,000 or unable to collect damages of more than £5,000.

19.25 Varying contracts

Contracts can only be varied when the contract allows and by a written instruction from the Head of Service or an Officer they have appointed to manage the contract. Where the contract provides for an extension, the Head of Service may exercise the option to extend the contract up to the specified maximum period if satisfied that the extension of the contract provides best value.

Any important changes to a contract may need to be agreed by the Board and must be recorded in writing. In an emergency, they can be made by a Director and reported to the next Board meeting.

Variations must not break any of the contract rules or any terms of the contract.

19.26 Interpreting the contract rules

Questions about the contract rules and any related guidance will be dealt with by the Head of Business Improvement or Head of Law and Governance.