

19. CONTRACT RULES

Contents

19.1 When do these rules apply? ..... 1

19.2 Other Relevant Guidance, Rules and Law.....2

19.3 Responsibility to Follow these Rules and Relevant Law.....2

19.4 Interests of Councillors and Officers in Contracts.....2

19.5 Before a Contract is Agreed.....3

19.6 Total Contract Value ..... 3

19.7 Sub-contracting ..... 4

19.8 Format of Contracts .....4

19.9 Clauses that must be included in all Contracts .....4

19.10 Contracts valued over £100,000 .....5

19.11 Thresholds for quotes and tenders .....6

19.12 When is there no need to seek quotes or tenders? .....8

19.13 Exclusion Lists ..... 8

19.14 Tendering of contracts over £150,000 .....8

19.15 Open Tendering .....9

19.16 Restricted tendering.....9

19.17 Negotiated tendering..... 10

19.18 Other EU Procurement Procedures ..... 10

19.19 Submitting a tender..... 11

19.20 Council’s Handling of Tenders Received through Portal ..... 11

19.21 Accepting quotes and tenders ..... 11

19.22 Copies of contracts and register of contracts.....12

19.23 Contract Management ..... 13

19.24 Legal claims relating to contracts.....13

19.25 Varying contracts .....13

19.26 Acquiring and disposing of land and buildings.....14

19.27 Interpreting the contract rules ..... 15

19.1 When do these rules apply?

These rules apply when the Council expects to give or receive money or payments in kind. They apply to both capital and revenue and cover:

- contracts for goods, works or services. Different rules apply to the acquisitions and disposal of land or buildings. (See 19.26)

The Board can waive any of these rules after considering a report from the relevant Head of Service giving reasons for the waiver and taking into consideration advice from the Head of Financial Services and the Head of Law and Governance. (But it must always 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.

These rules do not apply to the following arrangements:

- grant giving – the rules for this are in the Council's grants prospectus
- where the Head of Financial Services agrees that there is no viable alternative supplier such as in relation to utility related works

These contract rules do not apply to services provided in house by the Council's own employees. However, the Council must satisfy itself that the services provided represent best overall value.

## **19.2 Other Relevant Guidance, Rules and Law**

Attention should also be paid to:

- The Finance Rules (See 18)
- The budget and policy framework procedures (see 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 detailed in the Council's Procurement Toolkit.

Service Heads 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. Service Heads must make sure their staff and any agents acting on behalf of the Council follow them.

The Council may take disciplinary and/or legal action against anyone who breaks 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 (see part 22 of the Constitution). 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 interests in existing and proposed 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 on something they have declared an interest in, they must make reference to their interest at the meeting.

### **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 plan
- The Council has the legal power to enter into the contract and relevant internal approval.
- There is a budget to fund the whole life of the contract.
- Relevant project approval has been granted – see 18.12
- The total contract value has been calculated – see 19.6
- It provides value for money over the life of the contract
- There is no existing contract in place which covers, for the whole organisation (a corporate contract), the procurement of a particular service or supplies
- Where the Head of Financial Services has approved an exemption from a corporate contract. An exemption will only be given when it is inappropriate to use a corporate contract: for example where that contractor is unable to provide the service.

### **19.6 Total Contract Value**

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

- the value of anything the Council is getting free of charge as part of the contract or which is charged on to 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. The Council's Head of Financial Services 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 (whether bespoke or in an official purchase order format) must be in writing and must identify the terms and conditions that apply. Where a contract has a total value of less than £100k and no non-standard warranties are required, the contract may be in the form of an official purchase order.

Contracts with a total contract value over ~~£100,000~~ £150,000 must be sealed (see 21.3). Contracts under ~~£100,000~~ £150,000 must be signed by two officers with operational responsibility– one of whom must be the relevant Director or Head of Service (or an officer authorised by them).

All contracts over £100,000 must be in a form approved by the Head of Law and Governance and where appropriate include the Council's standard contract terms. Any variation to the contract terms must be approved by the Procurement Team (in consultation, where appropriate, with the Head of Law and Governance).

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

~~All contracts over £100,000 must be in the agreed standard form and include the Council's standard contract terms. Any variation to the contract terms must be approved by the Head of Law and Governance.~~

## 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;
- state the payment arrangements and any arrangements for deductions and discounts. The payment arrangements must not allow for payment in advance of the provision of goods or services unless the Head of Financial Services agrees;
- state the period/duration of the contract;
- require contractors to meet any standards set by the Head of Service and any appropriate British Standard or EU equivalents. EU standards must be included if the total contract value is over the EU threshold;
- require contractors to follow all appropriate codes of practice;
- require the contractor to hold appropriate insurance cover – the level of indemnity will be set by the Service Head after assessing the risk and

consulting with the Council's insurance officer if necessary. However this cover must include a minimum of £5 million public liability insurance, unless a lower level of cover has been agreed by the Head of Financial Services;

- seek a commitment from contractors to pay their employees at least the Oxford living wage: this includes (where appropriate) any employees engaged by a sub-contractor in fulfilling the contract; and
- include any other conditions and terms that have been agreed.

#### **19.10 Contracts valued over £100,000**

Contracts over £100,000 must additionally 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 Bribery Act 2010, and
  - 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 £5,000,000 employer liability insurance indemnity or any other level of cover recommended by the Head of Financial Services
  - provide £1,000,000 professional insurance or any other level of cover recommended by the Head of Financial Services
  - 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 Financial Services thinks it necessary
- (c) a clause saying who will manage the contract on behalf of the Council and the approval process for 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 the Freedom of Information Act or Environmental Information Regulations;
- (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 Service Head considers it necessary, a clause saying what damages must be paid if the contractor breaks the contract and explaining how the amount of damages was reached – the Service Head will consult the Head of Law and Governance on the amount of the damages and what should trigger them;
- (i) a clause giving the Council the ability to exclude the contractor from applying for new contracts where there has been significant or persistent deficiencies in the performance of a significant requirement under a prior public contract;
- (j) where relevant and operationally possible, a clause requiring the contractor to fit side guards and appropriate side mirrors to vehicles over 3.5 tonnes to protect cyclists and pedestrians when driving to and from any site specified by the Council; and
- (k) a clause indicating that the Council is required to publish all new contracts on its website, and will do so in accordance with its obligations, subject to any operative exemptions, within the applicable local government transparency regulations.

### **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 Corporate System”). The Head of Financial Services will provide details of the Corporate System and any changes to it. Except where an Approved List is used all purchases of goods, services and works with a value in excess of £10,000 must, therefore, be undertaken through the Corporate System. All such purchases shall also comply with the thresholds for quote and tender provisions as set out below. Exemption from using the Corporate System can only be obtained with the written consent of the Head of Financial Services or an officer nominated by them.

Where quotes are obtained outside of the Corporate System these must be retained by the relevant Service Head. Unsuccessful quotes may be disposed of after 12 months from the award of the contract; successful quotes and contract documentation must be retained for a period of 7 years from the end of the contract.

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

Service Heads must consider advertising all contract opportunities valued up to £150,000. Where contract opportunities are advertised, and the value exceeds £25,000, in addition to the Corporate System the opportunity must also be advertised on the Government’s procurement portal, Contracts Finder.

Officers seeking quotations from potential suppliers for a contract shall (subject to the following provisions) comply with requirements set out in the table below.

Quotation and tender documentation must clearly specify the basis on which the most economically advantageous offer will be determined using a combination of cost and quality. Deviation from the Council's standard price:quality model requires the prior approval of the Head of Financial Services or an officer nominated by them.

For all quotes and tenders over £100,000 a procurement strategy which evaluates options for the solution to be procured and route to market must be produced and approved by the Procurement team and the relevant Service Head.

Total value of contract	Quotes or tendering	Advertisement required?	Process led by
>£1,000 < = £10,000	<del>Obtain</del> <u>Get</u> at least two quotes, at least one of which must be from a local supplier	No	Officer authorised by the relevant Service Head
>£10,000 <=£100,000	<del>Get</del> <u>Obtain</u> at least three quotes, at least one of which must be from a local supplier	No, but advertising should be considered.	Officer authorised by the relevant Service Head
>£100,000 <=£150,000	Obtain at least four quotes, at least one of which must be from a local supplier. An open tender process may be used instead where it is deemed appropriate	No, but advertising should be considered.	Authorised Procurement Practitioner or Procurement Team
>£150,000	Invite tenders (EU procurement law and guidance must be followed for contracts over EU thresholds) – process conducted by Procurement Team	Yes	Procurement Team

If fewer than the requisite number of quotations is obtained it will be possible to proceed to award a contract if it can be demonstrated that competition has been sought. Award of a contract in such circumstances is delegated to:-

- the relevant Head of Service up to a contract value of £100,000;
- the relevant Head of Service and the Head of Financial Services for contracts with a value above £100,000.

This does not remove the obligation to secure best value for money.

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

The Head of Financial Services can approve the creation of an Approved Supplier list in the following circumstances:

- where the services are not suitable or already available through an existing framework contract;
- the suppliers have been subject to a pre-qualification assessment by the Procurement Team; and
- no single contract has a value of more than £100,000.

~~The Head of Financial Services, and the Monitoring Officer can approve an~~ An exemption to not seeking quotes or tenders may be given in the following circumstances:

### (a) Emergencies

If there is an emergency or a disaster, the Chief Executive can approve contractual arrangements outside these rules after consulting the Head of Financial Services and/or Monitoring Officer. The leader must be told as soon as possible.

### (b) Where there is no overall economic benefit to the Council

An exemption may be granted where there is no overall economic benefit, for example where there is only one supplier or no competitive market exists.

Service Heads do not have to seek or obtain quotes for contracts with a value up to £150,000 where ~~the Head of Financial Services and Monitoring Officer give their~~ written approval to waive the requirement to seek or obtain quotes has been given:

- by the Head of Financial Services and the relevant Service Head for contracts up to £100,000; and
- by the Head of Financial Services, Monitoring Officer and the relevant Service Head for contracts between £100,000 and £150,000.

## 19.13 Exclusion Lists

The UK Public Contracts Regulations 2015 (regulation 57) provides the Council with the ability to exclude a supplier from bidding for future contract opportunities where one or more of the exclusion provisions apply.

Any exclusion list must be approved by the Head of Financial Services.

## 19.14 Tendering of contracts over £150,000

If the total contract value is over £150,000 tenders must be sought. Tenders can also be sought for lower contract values. Tenders will be sought in accordance with the requirements of ~~and the best practice as specified by the~~ UK Public Contract Regulations. Paragraphs 19.15, 19.16 and 19.17 set out the principal tendering methods but alternative methods may be used provided



that they are compliant with the UK Public Contracts Regulations and the Head of Financial Services has given their express agreement. Paragraphs 19.20, 19.21, 19.22 and 19.23 apply to all tenders.

### **19.15 Open Tendering**

#### **(a) The Council will**

- Issue a call for competition via advertisement on the Council's Corporate System and the Government's procurement portal (Contracts Finder).
- If the total contract value is above the relevant EU threshold the notice will also be placed, in the Official Journal of the European Union – the notice will need to comply with EU Procurement Directives.

#### **(b) The notice will:**

- say what the contract is for
- describe how to express interest in tendering
- give the deadline and arrangement for receipt of 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, the UK Public Contract Regulations must be followed. These require the notice to be published in the Official Journal of the European Union at least 35 days before the deadline for tenders based on the tenders being submitted electronically.

### **19.16 Restricted tendering**

#### **(a) A restricted tender process can only be used for contracts valued above the EU thresholds.**

Expressions of interest will be sought via advertisement on the Council's Corporate System, the Government's procurement portal (Contracts Finder) and the Official Journal of the European Union.

A short list of bidders will be invited to tender based on their financial and technical capability to deliver the contract or through the provision of a self-declaration certificate together with any additional information required to demonstrate their capability to fulfil a contract.

The shortlist will be selected by the appointed tender evaluation team and will be approved by the relevant Service Head and Head of Financial Services. It should include at least five individuals or organisations who expressed an interest in tendering. If fewer than five individuals or organisations are considered suitable by the Service Head then all of those suitable should be considered.

#### **(b) The advertisement notice will:**

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

The UK Public Contract Regulations require the notice to be published in the Official Journal of the European Union for at least 30 days based on the tender being submitted electronically. The full tender documentation must be published at the time of placing the advert.

### **19.17 Negotiated tendering**

There are specific cases and circumstances laid down in the UK Public Contract Regulations 2015 where it is permissible to award a contract by a negotiated procedure such as the negotiated procedure without prior publication, or competitive procedure with negotiation. The use of these procedures is subject to the approval of the Head of Financial Services and the Monitoring Officer.

### **19.18 Other EU Procurement Procedures**

The following procedures can be used for individual contracts if the Head of Financial Services and the relevant Head of Service agrees:

#### **(a) Competitive dialogue**

These procedures 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 or another body such as a purchasing consortium and suppliers that sets the terms and conditions for any call-off contracts that might be awarded from the framework. Framework agreements are for a set period and should not normally be for a period of more than four years although call-off contracts can be let for a longer period.

#### **(c) Electronic Auction**

eAuctions are electronic auctions where suppliers bid against each other to offer the lowest price. They are open to any supplier that meets certain conditions and include all tenders that meet the specification.

#### **(d) Public auction**

This can be used for buying or selling land and property.

#### **(e) Purchasing consortiums**

Purchasing consortiums must be able to show that they comply with the UK Public Contract Regulations.

#### **(f) Innovation Partnership**

This can only be used if there is a requirement to procure goods, services or works which are currently unavailable to the market and is to only be used to appoint a specialist organisation to innovate to deliver a new requirement.

### **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) Tenders must be submitted via the Corporate System or the electronic system that was used to invite tenders.**

#### **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) 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.
- (c) Tenders from unsuccessful bidders must be kept by the Head of Financial Services for 12 months after the start of the contract and then destroyed confidentially.

#### **19.21 Accepting quotes and tenders**

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

- the Service Head may accept the most economically advantageous quote or tender if the Council is the buyer, or the highest if the Council is the seller, as long as:
- there is budget provision 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 is over £150,000 but less than £500,000**

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

- there is budget provision 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
- the Head of Financial Services and the Monitoring Officer have been consulted.

**(c) Total contract value £500,000 or over where the Council is the seller**

Tenders of £500,000 or over must be the subject of a written report to the Board.

**(d) Total contract value is over £500,000 but less than £1,000,000 where the Council is the buyer**

A Director may accept the most economically advantageous tender, as long as:

- there is budget provision 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
- the Head of Financial Services the Monitoring Officer, the Chief Executive and the relevant Board Member have been consulted

**(e) Total contract value £1,000,000 or over where the Council is the buyer**

Tenders of £1,000,000 or over must be the subject of a written report to the Board unless the Board has already delegated authority in relation to the tender.

The relevant Head of Service will be responsible for ensuring the publication of Executive Decisions taken by them or in their name.

## **19.22 Copies of contracts and register of contracts**

**(a) Keeping copies of old contracts**

If the total contract value is over £5,000 and is in written form (bespoke, not an official purchase order), the Head of Financial Services will keep the contract in a secure place:

- for a least seven years from its end date if it was signed;
- for a least 13 years from its end date if it was sealed,
- however the Service Head who invited the contract will be responsible for managing it.

**(b) Keeping a register of contracts**

The Head of Financial Services will keep a central register of contracts over £5,000.

All Service Heads are required to provide the original of all signed written (bespoke) contracts over £5,000 to the Head of Financial Services.

**(c) What will the register record?**

For each contract, the register will record details as required under the Transparency Code for Local Government and will be published on the Council's website.

**(d) Register of certified contracts**

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

## **19.23 Contract Management**

All contracts shall have an appointed officer responsible for managing the contract.

Contract Managers will be responsible for:

- ensuring that service expectations are met or exceeded;
- managing the performance of the supplier; and
- maintaining a risk register, where required.

**Contract Managers shall promptly seek advice from the Procurement team on significant or persistent performance issues.**

#### **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 Service Head or an officer they have appointed to manage the contract. Where such a variation would have a material impact on the nature of the contract or would materially alter its risk profile, advice must be sought and received from both Law and Governance and the Procurement team before such variation is put into effect.

Where the contract provides for an extension, the Service Head may exercise the option to extend the contract up to the specified maximum period if satisfied that the extension of the contract represents best value.

Variations must not break any of the contract rules, the UK Public Contract Regulations 2015, or any terms of the contract.

Variations to contract must be submitted in writing with acceptance confirmed by all parties to the contract, and appended to the signed original copy of the contract.

A contract or framework may change without re-advertisement in the Official Journal of the European Union where:

- minor changes that do not affect its nature and not exceed the relevant EU threshold and not exceed 10% for goods/services or 15% for works of the initial contract value;
- additional goods, services or works that have become necessary where a change of supplier would not be practicable (for economic, technical or interoperability reasons) or involve substantial inconvenience/duplication of costs up to 50% of the initial contract value; and
- the change was unforeseeable and does not affect the nature of the contract or exceed 50% of the initial contract value.

In the case of the second and third bullet points, the Council must publish a notice of modification of a contract during its term in the Official Journal of the European Union.

### **19.26 Acquiring and disposing of land and buildings**

- (a) This rule applies to acquisitions and disposal 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 formal commitment is made to dispose of land a report must go to the Board 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
  - 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 Corporate System but must be held securely until after the tender deadline and opened after the deadline by two Officers nominated by the Head of Housing and Property.
- (d) After a provisional agreement has been reached on an acquisition or disposal, another report must go to the Board 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.
- (e) Where the acquisition or disposal of a freehold or leasehold has a consideration or premium up to £500,000 or a lease has a rental value up to £125,000 per annum authorisation must be given by the relevant Head of Service and the Head of Law and Governance.
- (f) The documentation in relation to the acquisition or disposal of land and buildings will be executed by (or on behalf of) the Head of Law and Governance.

### **19.27 Interpreting the contract rules**

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

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