

## Constitution - Oxford City Council

### 19. Contract rules

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#### **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 (19.26).

The Cabinet 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 relevant procurement law).

These rules do not apply to the following arrangements:

- grant giving – the rules for this are in the Council’s grants prospectus and grant agreement.
- where the Head of Financial Services agrees that there is no viable alternative supplier such as in relation to utility related works
- 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 and the council operates within the law.
- when the Council wishes to let a contract to a Council-owned company which holds “Teckal” status (19.12 (c)).

### 19.2 Other relevant guidance, rules and law

Attention should also be paid to:

- The Finance rules (Part 18)
- The Budget and Policy Framework procedures (Part 16)
- Who Carries out Executive Responsibilities? (Part 4) and Who Carries out Council Responsibilities? (Part 5)
- National, and relevant procurement law and guidance detailed in the Council’s Procurement Toolkit.
- 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 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 procurement 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 (Part 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 interests in existing and proposed contracts or suppliers. 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 Council or the Cabinet 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 (Part 18.12)
- The total contract value has been calculated (Part 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 supplier is unable to provide the service.

## 19.6 Total contract value

The total contract value is the total amount (including 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 supplier intends to appoint one or more sub-contractors to discharge some or all of its contractual obligations, the main supplier 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 £150,000 must be sealed (Part 21.3). Contracts under £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 Find a Tender Service (FTS) threshold (the replacement for the Official Journal of the European Union (OJEU)) must comply with relevant procurement law and guidance (and any amended FTS 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;
- 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 suppliers to meet any standards set by the Head of Service and any appropriate British Standard;
- require suppliers to follow all appropriate codes of practice;
- require the supplier 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 £5 million public liability insurance, unless a lower level of cover has been agreed by the Head of Financial Services;

- seek a commitment from suppliers to pay their employees at least the Oxford Living Wage or the Living Wage Foundation rate: this includes (where appropriate) any employees engaged by a sub-contractor in fulfilling the contract;
- include any other conditions and terms that have been agreed; and
- All contracts of £25,000 and over must include a minimum 10% social value weighting where proportionate and relevant. If not considered the reason must be documented.

### 19.10 Contracts valued over the Find a Tender Service (FTS) threshold

Contracts over the FTS threshold 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 supplier if it discovers that:
  - the supplier or its employees have given, offered or promised anything to influence how the Council awarded or managed the contract;
  - the supplier or its employees have committed an offence under the Bribery Act 2010, and
  - the supplier 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 supplier 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 supplier to protect the health and safety of anyone affected by its work;
- (e) a clause requiring the supplier 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 supplier 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 supplier does not meet the Council's standards and timescales and to bill the supplier for:
  - the administrative costs of finding and appointing a new supplier, and

- any amount by which the new contract exceeds the old one.
- (h) if the Head of Service considers it necessary, a clause saying what damages must be paid if the supplier breaks the contract and explaining how the amount of damages was reached – the Head of Service 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 supplier 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 supplier 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.
- (l) A clause indicating the agreed service levels (SLAs) and key performance indicators (KPIs)

### 19.11 Commissioning Oxford Direct Services Limited for one off capital schemes

Oxford Direct Services Limited (ODSL) is a wholly owned council company and meets the requirements of Regulation 12(1) of the Public Contract Regulations 2015 (PCR 2015) commonly known as the “Teckal” exemption as follows:

- the Council is exercising a control over the company similar to that which it exercises over its own departments i.e. the Council demonstrably exercises a decisive influence over both strategic objectives and significant decisions of the company;
- more than 80% of the activities of the company are carried out in the performance of tasks entrusted to it by the Council;
- there is no direct private capital participation in ODSL – the company is wholly owned by the Council.

As such contracts may be awarded to ODSL without the need to comply with the full requirements of the PCR 2015.

Officers should follow the appropriate process below according to the value of the proposed contract when commissioning ODSL to undertake one off capital schemes and where required ensure that their actions and decisions are recorded by an officer executive decision:

(a) Contracts below (<) £10,000

All work let to ODSL must have a detailed specification and be recorded in writing to ensure that proper records are kept.

(b) Contracts above (>) £10,000 up to or equal to £75,000

There should be a detailed specification and demonstration of a strong business need for the service or works provided by ODSL. The commissioning officer should be aware of the market price and conditions for such services and works. This can be shown by market quotes for the work (which may not be practical to

obtain) or benchmarking information verified on a regular basis and retained for audit purposes. In letting each separate contract the officer is responsible for documenting this, retaining those records for audit purposes and ensuring compliance with the Duty of Best Value and the avoidance of illegal state aid. Large contracts to be awarded should not be artificially disaggregated to avoid compliance with these requirements.

- (c) Contracts above (>) £75,000 up to or equal to £150,000:

For contracts in this range the same criteria as in 19.11(b) above should apply in addition the commissioning officer may obtain and use the services of a Quantity Surveyor (QS) (using a framework).

- (d) Contracts above (>) £150,000 – up to or equal to £1,000,000:

A detailed specification is required.

The contract must be justifiable for state aid purposes as meeting the Market Economy Operator Principle (“MEOP”). The Economic transactions carried out by a public body do not confer an advantage on the other party, and therefore do not constitute illegal aid, if they are carried out in line with normal market conditions.

This can be shown by:

- (i) benchmarking the contractual terms and price being proposed against similar contractual offers made by third party contractors; and/or
- (ii) using the services of independent advisers commissioned by the Council such as an external QS to assess the commercial price or price range for the contract before the contract is let.

- (e) Value of contract above (>) £1,000,000

A detailed specification is required.

The use of benchmarking of other market intelligence held by the client service is appropriate where it exists.

The use of external QS services is mandated.

A formal tender evaluation process should be followed with a Cabinet report written to support the decision to award the contract.

Should tendering and procurement of an alternative contractor need to be considered for any capital scheme, for whatever reason, including capability or capacity, this will need the approval of the Executive Director of Development, or their delegate.

### 19.12 Thresholds for quotes and tenders\*

The Council is seeking to ensure that all purchases with a value of over £25,000 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. 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 Head of Service. 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.

Heads of Service must consider advertising in all cases and must advertise contract opportunities as indicated in the table below. If they do not intend to advertise as required they must seek an exemption before entering into a contract. 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 the FTS threshold a Procurement Commencement Document (available from the Council's intranet) 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 Head of Service.

<b>Total value of contract</b>	<b>Quotes or tendering</b>	<b>Advertisement required?</b>	<b>Process led by</b>
< £10,000	Minimum one quote in writing, (local* if possible) alternatively an approved Framework may be used	No	Officer authorised by the relevant Head of Service
>=£10,000 <=£25,000	Obtain up to three written quotes (minimum two), attempt to seek at least one from a local* supplier alternatively an approved Framework may be used	Advertising should be considered and any contract of £25,000 and over must be placed on contracts finder in any event	Officer authorised by the relevant Head of Service
>£25,000 <=£100,000	Obtain up to four written quotes (minimum three), Attempt to seek at least one from a local** supplier. Alternatively an approved Framework may be used	Yes, advertised on the corporate system and on contracts finder.	Authorised Procurement Practitioner or Procurement Team
>£100,000 < £213,477	Obtain up to six quotes	Yes, advertised on the corporate system	Authorised Procurement



Total value of contract	Quotes or tendering	Advertisement required?	Process led by
including VAT (goods and services) >£100,000 < £5,336,937 including VAT (works)	(minimum four). Attempt to seek at least one from a local* supplier. Alternatively an approved Framework may be used.	and on contracts finder	Practitioner or Procurement Team
>£213,477 including VAT (goods and services) £5,336,937 including VAT (works)	Invite tenders (procurement law and guidance must be followed for contracts over the FTS thresholds) – process conducted by Procurement Team	The corporate system	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 in consultation with 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.

Where the option exists to Direct Award under a Framework, the rules of the framework allowing for direct award must be followed which should include as a minimum a full justification from the service area and sign off from the relevant Head of Service. The approval of the Head of Financial Services will also be required for contracts with a value of £100,000 and over.

\*This will be the procurement limits as published from time to time by the Government

\*\*suppliers that have an OX postcode

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

An Approved Supplier List may only be created with the approval of the Head of Financial Services and 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
- there is no single contract with a value of more than £100,000.

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

(c) Officers do not have to seek or obtain quotes for contracts with a value up to the FTS threshold where written exemption to waive the requirement to seek or obtain quotes has been given:

- by the Financial Accounting Manager or Management Accounting Manager and the relevant Head of Service for contracts up to £100,000;
- and by the Head of Financial Services, Monitoring Officer and the relevant Head of Service for contracts above £100,000 (only applicable where Sole Supplier status can be evidenced, in an emergency or where the minimum number of tenders have not been submitted through an open tender process).

(d) Where the Council wishes to let a contract to a company which it owns and which holds “Teckal” status (under s12(1) Public Contract Regulations 2015) there is no legal requirement for the Council to seek alternative quotes or tenders in accordance with these Contract Rules. This provision does not remove the need for the Council to ensure that by letting a contract to its “Teckal” company it is meeting its obligations as a best value authority under the Local Government Act 1999 and is compliant with State Aid legislation and any subsequent legislation. Each contract opportunity should be considered individually to ensure that the Council is achieving value for money for the public purse having taken into consideration the relevant market conditions and information.

(e) Where the provision is for a Subscription or Membership and alternative suppliers are not available.

(f) Where the Council is a member of a Consortium and making a payment towards the Service / Goods / Works being procured as part of the Consortium. The Council however should ensure that due diligence is undertaken and that value for money is obtained (at least one consortium member should adhere to the PCR2015 if applicable).

(g) Where grant funding incorporates direct instruction as to the supplier to be used.

(h) When the Council opt into a National Scheme and the Supplier is assigned.

### 19.14 Exclusion Lists

The 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.

### 19.15 Tendering of contracts over the Find a Tender Service (FTS) threshold

If the total contract value is over the FTS threshold tenders must be sought (subject to 19.11). 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 Public Contract Regulations 2015. If the contract value is over the FTS threshold the procurement team will advise of the various options available and which would be the best course of action and would assist with the tender process. Paragraphs 19.15, 19.16 and 19.17 set out the principal tendering methods but alternative methods including e-tendering 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.

### 19.16 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 FTS threshold the notice will also be placed in the Find a Tender Service – the notice will need to comply with 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 FTS threshold, the UK Public Contract Regulations must be followed. These require the notice to be published in the Find a Tender Service at least 30 days before the deadline for tenders based on the tenders being submitted electronically.

### 19.17 Restricted tendering

(a) A restricted tender process can only be used for contracts valued above the FTS threshold.

Expressions of interest will be sought via advertisement on the Council's Corporate System, the Government's procurement portal (Contracts Finder) and the Find a Tender Service (FTS).

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 Find a Tender Service 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.

### 19.18 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.

### 19.19 Other 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.

### 19.20 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 over £25,000 must be submitted via the Corporate System or the electronic system that was used to invite tenders.

### **19.21 Council's Handling of Tenders Received through the Corporate System**

- (a) Each tender received via the Corporate System 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.

### **19.22 Accepting quotes and tenders**

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

The Head of Service 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 at the start of the project
- 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

The Head of Financial Services or an Executive 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 at the start of the project
- 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 Cabinet.

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

The Head of Financial Services or an Executive 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 at the start of the project
  - 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 Cabinet 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 Cabinet unless the Cabinet 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.

### 19.23 Letters of intent

A letter of intent is provided by an employer to a contractor; here the employer indicates an intention to enter into a formal contract for the works described and asks the contractor to start some work before formal contracts are agreed.

In most circumstances, parties should not contract on the basis of a letter of intent and should avoid starting work on site under one. Letters of Intent which are used or drafted inappropriately have the potential to create future contractual difficulties and possibly even establish a contract when none was intended; both of which can have significant financial consequences.

There may however be limited circumstances in which letters of intent can be a useful tool if drafted appropriately. This could be if items which have long lead in times where orders may reasonably need to be made before a formal contract can be finalised or completed.

Letters of intent should, as a minimum, include the following:

- A clear statement that the letter of intent is an interim agreement and that it will be superseded by the formal contract, with the type of contract stated
- Set out when and what works are to commence, along with details of any conditions that may need to be satisfied before works start, for example, clearance of planning conditions or the requirement for some form of performance bond
- A clear financial limit on the value of works/amount the employer is prepared to pay under the terms of the letter of intent
- Set out any and all restrictions on site access, working hours or methods
- State what the contractor will be paid if the letter of intent is terminated or if a formal contract is not completed.

In all cases letters of intent must:



- Not be used as a means to circumvent proper contractual or procurement arrangements
- Be authorised by the relevant Executive Director in consultation with the Head of Law and Governance and the Head of Financial Services

### 19.24 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 Head of Service 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.

### 19.25 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;
- ensuring that the procurement team have a copy of the contract (if the value is over £100,000); and
- maintaining a risk register, where required.

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

### 19.26 Legal claims relating to contracts

Claims by suppliers 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.

### 19.27 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 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 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 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 Find a Tender Service (FTS) where:

- minor changes that do not affect its nature and not exceed the relevant FTS 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 Find a Tender Service.

### 19.28 Acquiring the use of assets through contracts

(a) This rule applies to

- Lease arrangements
- Hire of assets
- Rental agreements
- Contracts where the supplier uses assets to provide services to the Council; these may be explicit in the contract or implied due to the service being provided

- (b) Assets acquired or the use of assets acquired through contracts must be approved by the Head of Financial Services. (Part 18.15(d))
- (c) As a minimum the following information relating to the assets under or in the contract must be obtained during the procurement process to inform the decision by the Head of Financial Services:
- Contract start date
  - Contract end date
  - Option to purchase details
  - Rental amount
  - Initial one off payments
  - Payment dates and frequency
  - Details of payment penalties
  - Total capital element
  - Total interest element
  - Interest rate charged
  - Useful economic life of asset
  - Break clause details
  - Profile of lease payments (fixed and variable)
  - Details of how future potential rentals will increase and on what basis
  - Whether rentals are fixed or index linked
  - Details of non-lease components included in the rental
  - Details of any service elements
  - Residual value
  - Information on return condition of asset
  - Any notice period

### **19.29 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 (except for disposals pursuant to right to buy legislation)
  - leases with a rental value over £125,000 per annum (except statutory lease renewals under Part II of the Landlord & Tenant Act 1954)
  - freeholds and leases for less than best consideration except when the acquisition or disposal is made:
    - under a legal duty; or
    - under a confirmed compulsory purchase order; or

- under a scheme that has already been agreed by the Cabinet 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 the local ward member must be consulted.
- (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 Executive Director for Development or the Head of Corporate Property or an externally appointed agent.
- (d) After a provisional agreement has been reached on an acquisition or disposal with the interested external party, a report covering the terms of the disposal or acquisition and how the land or buildings will be used should be submitted to either the Cabinet or for an Officer Executive Decision as appropriate. In respect of disposals any report must cover the following as appropriate:
  - 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; and
  - why any disposal is for less than best consideration 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.

### **19.30 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.