



## **CONTRACT PROCEDURE RULES**

**Effective from October 2007**

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## **2. APPLICATION/COMPLIANCE WITH CONTRACT PROCEDURE RULES**

- 2.1. These Contract Procedure Rules are made under Section 135 of the Local Government Act 1972 and apply to all Contracts for the supply of works, goods or services made in the name of the Council.
- 2.2. Where in these Rules “the Council” is referred to, the term shall include the reference to School Governing Bodies by virtue of the Scheme for Financing Schools.
- 2.3. A Contract is made whenever the Council accepts an offer from a third party to provide works, goods or services and is entered into in the name of the Council. This can be via a formal Contract, purchase order, verbally over the phone or via email/letter.
- 2.4. Every Contract entered into by the Council shall be entered into pursuant to or in connection with the Council's functions and shall comply with:
  - 2.4.1. all relevant statutory provisions;
  - 2.4.2. the relevant European procurement rules (the EC Treaty, the general principles of community law and the European Union's public procurement directives implemented by the UK Regulations);
  - 2.4.3. the Council's Constitution including these Contract Procedure Rules, the Council's Financial Procedure Rules and Scheme of Delegation; and;
  - 2.4.4. the Council's strategic objectives and policies including, amongst others, the Community Strategy and the Procurement Strategy.
- 2.5. These Contract Procedure Rules apply to all Contracts awarded by the Council for works, services or supplies, regardless of the source of funding for the Contract. They apply to procurement by any form of official Council order and equally to Contracts awarded by any person, firm or body on the Council's behalf.
- 2.6. No Contract shall be entered into unless the appropriate Executive Director is satisfied that there is adequate budget provision and all necessary consents to the expenditure have been obtained.
- 2.7. Where a Contract involves the making of a Key Decision, the Executive Director shall ensure that the Director of Legal and Democratic Services and the Director of Finance and ICT are consulted throughout the procurement process.
- 2.8. It shall be a condition of any Contract between the Council and any persons (not being Officers of the Council) who are required to supervise a Contract on the Council's behalf, that in relation to such Contract, those persons shall comply with the requirements of these Contract Procedure Rules as if they were Officers of the Council.
- 2.9. These Contract Procedure Rules shall not apply to:
  - 2.9.1. Contracts of employment.

- 2.9.2. Contracts for personal social care or educational need where in the opinion of the appropriate Executive Director (following consultation with the Director of Legal and Democratic Services) there is a demonstrable individual need, which renders procurement impractical.
- 2.9.3. Contracts for the purchase or sale of land or securities, or Contracts for the taking or granting of any interest in land, unless such Contracts involve the procurement of works, services or supplies.
- 2.9.4. Contracts for Goods to be bought at an auction and the Director of Finance and ICT has agreed in writing that the Council's interests will best be served by purchase through auction and has similarly agreed an upper limit for bids.
- 2.9.5. Contracts for the use of counsel or other legal representation where the Director of Legal and Democratic Services considers that a procurement exercise would be impractical and would not protect the Council's interest.
- 2.9.6. Contracts for works of art or theatre, which are of genuine exclusivity.
- 2.9.7. Contracts where the Executive Director in consultation with the relevant Cabinet Member, the Director of Finance and ICT and Director of Legal and Democratic Services consider it appropriate to utilise an existing Purchasing Consortia which has been procured under rules broadly comparable with these Contract Procedure Rules.
- 2.9.8. Contracts where the Executive Director in consultation with the relevant Cabinet Member, the Director of Finance and ICT and Director of Legal and Democratic Services consider it appropriate to utilise existing approved nationally negotiated Contracts or framework agreements which are available to the Council.
- 2.10. Any failure to comply with any of the provisions of these Contract Procedure Rules shall be reported to the relevant Executive Director and may result in disciplinary action.
- 2.11. An Executive Director shall take immediate action in the event of a failure to comply with these Contract Procedure Rules and shall inform and consult with the Director of Finance and ICT and the Director of Legal and Democratic Services.
- 2.12. Any dispute regarding the application of these Contract Procedure Rules shall be referred to the Director of Finance and ICT for advice.
- 2.13. The final arbiter for resolution of disputes regarding the application or interpretation of these Contract Procedure Rules shall be the Director of Legal and Democratic Services whose decision shall be binding and final.
- 2.14. Persistent breach of the Contract Procedure Rules will also be reported to Members.

### **3. PROCUREMENT PLANNING**

- 3.1. For each financial year, the Council shall create a Procurement Plan setting out its current contracts and contracts to be procured over £50k in value for the forthcoming financial year. The co-ordination and updating of this Plan will be the responsibility of the Corporate Procurement Unit.
- 3.2. At the beginning of each financial year, the Council (via the Corporate Procurement Unit) shall publish a Prior Information Notice in the Official Journal of the European Union listing the contracts for works, services and supplies, which it expects to procure for the coming financial year.

### **4. CALCULATION OF CONTRACT VALUES**

- 4.1. The estimated value of a Contract shall be the total consideration payable, net of value added tax which the Council expects to be payable under the Contract.
- 4.2. The total Contract Value shall be calculated as follows: -
  - 4.2.1. where the Contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period including any permitted extension;
  - 4.2.2. where the Contract period is indefinite or uncertain, by taking the monthly price payable under the Contract multiplied by 48;
  - 4.2.3. In relation to a Framework Agreement with no guaranteed commitment the Contract Value will be the estimated value of works, services of supplies over the full duration of the Contract;
  - 4.2.4. where the Council has a single requirement for goods, services or works, and a number of contracts have been entered into, or are to be entered into, the total Contract Value is the aggregated value of each of these Contracts.
- 4.3. Contracts shall not be artificially under or over estimated or divided into two or more separate Contracts where the effect is to avoid the application of these Contract Procedure Rules. The Council should make the best use of its purchasing power by aggregating purchases wherever possible.

### **5. PROCUREMENT PROCEDURES**

- 5.1. Before selecting a procurement procedure the Executive Director shall consider all relevant procurement procedures and, where appropriate consult the Director of Finance and ICT and the Director of Legal and Democratic Services.
- 5.2. Where an existing Contract or Framework Agreement or an in-house service is available to meet the procurement requirement they shall be used.
- 5.3. An e-auction process may form part of the overall tender process and be used in conjunction with the open or restricted procedures. The Director of Finance and ICT shall approve any proposal to use this process, and such approval will include consideration of all software, systems and procedures to be used. The

Invitation to Tender shall state that an e-auction will form part of the tender process. Specific e-auction guidance is available and shall be followed if using an e-auction.

5.4. These Contract Procedure Rules define the required procedure based on the estimated value of the Contracted value of the Contract:

Contract Value	Required Procedure
Less than £1,000	1 verbal quotation
Between £1,000 and £5,000	3 verbal quotations
Between £5,000 and £50,000	3 written quotations
Over £50,000 to EU thresholds	Tender process
EU thresholds and above	EU procurement procedure

5.5. The rules relating to the required process and timescales shall be observed for all Contracts as shall the EC Treaty and the general principles of EC law including non-discrimination, equal treatment, and transparency.

## 6. QUOTATION PROCESS

- 6.1. Competition via verbal or written quotation(s) is required for all Contracts or orders with an estimated value of below £50,000.
- 6.2. Verbal/written quotation(s) shall be obtained from Contractor(s) before a formal purchase order can be issued. A formal purchase order shall be issued after the quotation(s) have been received and shall specify the services, supplies or works to be provided and set out the price and terms of payments.
- 6.3. Where fewer than three Contractors are considered suitable to supply the required services, supplies or works, those Contractors which the Executive Director consider suitable shall be invited to quote.
- 6.4. The standard Council templates for quotations shall be utilised for all procurement activity.
- 6.5. All quotations sought (verbal and written) shall be recorded for audit purposes via the Council's e-procurement system when placing the formal purchase order.

## 7. TENDER PROCESS - Below EU Procurement Threshold

7.1. Where these Contracts Procedure Rules permit, Tenders shall either follow an Open or Restricted Procedure.

### 7.2. Open Procedure

- 7.2.1. This Contract Procedure Rule shall apply where an Executive Director has decided that Invitations to Tender for a Contract are to be made to all of those persons or bodies who have replied to a public notice.

7.2.2. Tenders shall be advertised via a public notice in a local or regional paper, or a relevant trade journal (or other equivalent appropriate placement), or both where, in the opinion of the Executive Director, this will be to the Council's advantage. The Executive Director shall ensure a suitable degree of Contract advertising sufficient to ensure competition, to avoid discrimination and maintain the impartiality of the procurement procedure.

7.2.3. The public notice shall: -

7.2.3.1. specify details of the Contract into which the Council wish to enter;

7.2.3.2. invite persons or bodies to express an interest in tendering;

7.2.3.3. specify a time limit, being not less than 14 days or such period within which such expressions of interest are to be submitted.

7.2.4. The Tender shall also be advertised on the Council's website.

7.2.5. After the expiry of the period specified in the public notice, Invitations to Tender for the Contract shall be sent to all those who have expressed an interest.

### **7.3. Restricted Procedure**

7.3.1. This Contract Procedure Rule shall apply where an Executive Director has decided that Invitations to Tender for a Contract are to be made to a limited number of Contractors. These Contractors can be selected via the placement of a public notice or from Contractors who are registered on the "Construction Line" initiative.

7.3.2. Tenders shall be advertised in a local or regional paper, or a relevant trade journal (or other equivalent appropriate placement), or both where, in the opinion of the Executive Director, this will be to the Council's advantage. The Executive Director shall ensure a suitable degree of Contract advertising sufficient to ensure competition, to avoid discrimination and maintain the impartiality of the procurement procedure.

7.3.3. The public notice shall: -

7.3.3.1. specify details of the Contract into which the Council wish to enter;

7.3.3.2. invite persons or bodies to express an interest in tendering;

7.3.3.3. specify a time limit, being not less than 14 days or such period within which such applications are to be submitted.

7.3.4. The Tender shall also be advertised on the Council's website.

7.3.5. After the expiry of the period specified in the public notice, and having regard for the evaluation criteria established in respect of the procurement, Invitations to Tender for the Contract shall be sent to: -

- 7.3.5.1. not less than four of the persons or bodies who expressed an interest to tender, selected by the Executive Director; or
- 7.3.5.2. where fewer than four persons or bodies have applied, or are considered suitable, those persons or bodies which the Executive Director consider suitable.

## **8. TENDER PROCESSES – Above the EU Procurement Threshold**

- 8.1. Where an estimated Contract Value exceeds the current EU thresholds, then the Contract shall be tendered in accordance with the EU Procurement Regulations. Under the EU Procurement Regulations, the Contract may be tendered under the open, restricted or, in exceptional circumstances the accelerated, negotiated or competitive dialogue procedure. A decision to use either an accelerated procedure or the negotiated/competitive dialogue procedure shall only be taken by an Executive Director following consultation with the Director of Finance and ICT and the Director of Legal and Democratic Services.
- 8.2. A Contract Notice in the prescribed form shall be published in the Official Journal of the European Union in order to invite Tenders or expressions of interest.
- 8.3. All Official Journal of the European Union (OJEU) Notices shall be published by the Director of Finance and ICT.

## **9. TENDER DOCUMENTATION**

- 9.1. The standard Council templates for tendering shall be utilised for all procurement activity.
- 9.2. As a minimum Tender documents shall include details of the Council's requirements for the particular Contract including:
  - 9.2.1. a description of the services, supplies or works being procured;
  - 9.2.2. the procurement timetable including the Tender return date and time, which shall allow a reasonable period (a minimum of 14 days) for the applicants to prepare their Tenders;
  - 9.2.3. a specification and instructions on whether any variants are permissible;
  - 9.2.4. the Council's Terms and Conditions of Contract;
  - 9.2.5. the evaluation criteria including any weightings as considered appropriate;
  - 9.2.6. pricing mechanism and instructions for completion;
  - 9.2.7. whether the Council is of the view that TUPE will apply (if applicable);
  - 9.2.8. form and content of method statements to be provided (if applicable);
  - 9.2.9. rules for submitting of Tenders (all Tenders should have the facility to be submitted electronically); and

- 9.2.10. any further information, which will inform or assist Tenderers in preparing Tenders.
- 9.3. All Invitations to Tenders shall be validated for conformance to Council Rules and issued by the Director of Finance and ICT.

## **10. CONTRACT TERMS AND CONDITIONS**

- 10.1. All written Contracts shall include the Council's standard Terms and Conditions for goods and/or services (as appropriate) and the Invitation to Tender or Quotation shall state that the Contract will be subject to the Council's standard Terms and Conditions. In relation to Works Contracts, the Terms and Conditions shall be those considered appropriate considering the specific Contract circumstances.
- 10.2. Any amendments required to the Council's standard Terms and Conditions shall be approved by the Director of Legal and Democratic Services prior to issuing as part of the Tender process.
- 10.3. All written Contracts shall include the following:
- 10.3.1. Where an appropriate "kitemark", British Standard Specification or British Standard Code of Practice issued by the British Standards Institution is current at the date of the Tender, every Contract shall, unless there is good and sufficient reason to the contrary, require that, as the case may be, all goods and materials used or supplied and all workmanship as a minimum requirement shall be in accordance with that Standard or equivalent European or International standard, without prejudice to any higher standard required by the Contract.
- 10.3.2. A clause empowering the Council to cancel the contract and to recover from the Contractor the amount of any loss resulting from such cancellation, if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, or for having done, or forborne to do, any action in relation to the obtaining or execution of the Contract or any other Contract with the Council or for showing, or forbearing to show, favour or disfavour to any person in relation to the contract or any other contract with the Council, or if the like acts shall have been done by any person employed by the Contractor or acting on their behalf (whether with or without the knowledge of the Contractor) or, if in relation to any Contract with the Council, the Contractor or any person employed by the Contractor or acting on their behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.
- 10.3.3. Include conditions reflecting the Council's commitment to good race relations and shall be based on its duties under the Race Relations (Amendment) Act 2000.

- 10.3.4. Include conditions reflecting the Council's commitment to good health and safety practice based on its responsibilities under any Health and Safety at Work Legislation.
- 10.3.5. Seek compliance with the principles of the Council's adopted policy on Community Cohesion.

## **11. RECEIPT AND OPENING OF TENDERS**

### **11.1. Hard Copy/Paper Tenders**

- 11.1.1. All Tenders received (unless submitted electronically) shall be addressed to the Director of Finance and ICT in a sealed envelope endorsed with the word "Tender" followed by the subject matter to which it relates. It shall not bear any distinguishing matter or mark to indicate the identity of the sender.
- 11.1.2. Tenders shall be kept in a safe place and remain unopened until the time and date specified for their opening.
- 11.1.3. Where a Tender is received after the specified time then it shall be disqualified. Any such Tender shall be returned promptly to the Tenderer who should be notified accordingly.
- 11.1.4. Tenders shall all be opened at the same time by an Executive Director or their nominated Officer and at least one other Officer nominated by the Director of Finance and ICT.
- 11.1.5. Tenders submitted in hard copy shall be opened by the same Officers and at the same time as any Tenders received electronically.
- 11.1.6. Where external agencies contribute to the overall funding of a project, representatives of the agency may also attend at the opening of Tenders, provided that such persons agree to maintain the confidentiality of all commercially sensitive information and other information which is or is to be exempted from public disclosure under the Local Government Act 1972.
- 11.1.7. Each Executive Director shall set up a system for submission and opening of quotations, which shall replicate that for Tenders.
- 11.1.8. On opening the Tenders, an Officer shall:
  - 11.1.8.1. Number each Tender consecutively;
  - 11.1.8.2. Check that the Form of Tender is completed as required and signed and officially stamp and sign the relevant pages;
  - 11.1.8.3. If there are priced bills, schedules of rates or the like, officially stamp, date and sign each summary sheet (or overall summary sheet, as appropriate) indicating the main Contract prices;
- 11.1.9. The following information shall be recorded in the Tender Register: -
  - 11.1.9.1. the title of the Tender Invitation;

- 11.1.9.2. the name of the Tenderer;
  - 11.1.9.3. the date & time of receipt of each Tender;
  - 11.1.9.4. the amount/value of each Tender;
  - 11.1.9.5. the date and time of the opening of the Tenders;
  - 11.1.9.6. the names of all persons present at the opening of the Tenders.
- 11.1.10. A Tender can be amended after it has been received and before it has been accepted only in order to correct an arithmetical error or other discrepancy made in good faith, subject to the following:
- 11.1.10.1. the Tenderer shall be given details of the error or discrepancy found during the examination of the Tender and shall be given the opportunity of confirming the Tender without amendment or withdrawing the Tender; or
  - 11.1.10.2. amending the Tender to correct genuine arithmetic errors provided that in this case, apart from these arithmetic errors, no other adjustment, revision or qualification is permitted. In this case written confirmation should be requested from the Tenderer as to the error or discrepancy and confirming what the corrected entry should be.
- 11.1.11. The appropriate Executive Director shall keep a record of all amendments made and a copy of the record shall be sent to the Director of Finance and ICT.

## **11.2. Electronic Tenders**

- 11.2.1. Requests for Quotations and Invitations to Tender shall be transmitted by electronic means where possible. Quotations and Tenders shall be submitted by electronic means provided that: -
- 11.2.1.1. evidence that the transmission was successfully completed is obtained and recorded; and
  - 11.2.1.2. electronic Tenders are kept in a separate secure folder under the control of the Director of Finance and ICT, which are not opened until the deadline has passed for receipt of Tenders.
- 11.2.2. At the time the Tenders are opened, the electronic Tenders are to be accessed and recorded first, followed by the conventional paper Tenders.
- 11.2.3. On opening the electronic Tenders, an Officer shall:
- 11.2.3.1. Number each Tender consecutively within the Tender Register;
  - 11.2.3.2. Check that the Form of Tender is completed as required;
  - 11.2.3.3. If there are priced bills, schedules of rates or the like, log the main Contract prices on the Tender Register;
- 11.2.4. The following information shall be recorded in the Tender Register: -

- 11.2.4.1. the title of the Tender Invitation;
- 11.2.4.2. the name of the Tenderer;
- 11.2.4.3. the date & time of receipt of each Tender;
- 11.2.4.4. the amount/value of each Tender;
- 11.2.4.5. the date and time of the opening of the Tenders;
- 11.2.4.6. the names of all persons present at the opening of the Tenders.

## **12. NEGOTIATION FOLLOWING RECEIPT OF TENDERS**

- 12.1. Negotiations following the receipt of a Quotation or Tender submitted shall only be undertaken in accordance with these Contract Procedure Rules.
- 12.2. Negotiation following the receipt of a Tender shall not apply to any Contract that is governed by EU procurement directives, unless expressly allowed under the EU Procurement Regulations.
- 12.3. For procurements under the EU thresholds, the Executive Director may, after consulting with the Director of Finance and ICT, authorise negotiations with the two Most Economically Advantageous Tender or Quotation providers only if they consider that none of the Tenders or Quotations are acceptable and it is in the Council's interest to do so. In cases where a Procurement process is for multiple providers, the number of Tenders selected for negotiation may be increased appropriate to the number of Contracts to be let.
- 12.4. Negotiations shall be conducted on behalf of the Council by at least two Officers. The Director of Finance and ICT shall be invited to send a representative to the negotiation meetings. A full written record shall be kept of the results of the negotiations, signed by the Executive Director and a copy sent to the Director of Finance and ICT.
- 12.5. Clarification of ambiguous Tenders does not constitute post tender negotiations.
- 12.6. At the conclusion of the post tender negotiation process, those Tenderers invited to negotiate will be invited to submit a best and final offer under the same procedure as for the receipt and opening of original Tenders or quotations.

## **13. TENDER EVALUATION**

- 13.1. Tenders subject to the EU Procurement Regulations shall be evaluated in accordance with the relevant EU Procurement Regulations and the evaluation criteria set out in the Invitation to Tender. All other Tenders shall be evaluated in accordance with the evaluation criteria set out in the Invitation to Tender.
- 13.2. The evaluation criteria shall be predetermined and approved by the appropriate Executive Director and the Director of Finance and ICT and listed in the Invitation to Tender documentation, in order of importance. In addition, the criteria shall be strictly observed (and remain unchanged) at all times throughout the Contract Award procedure.

- 13.3. Where there is a requirement for a Tender to be awarded on the basis of being “Most Economically Advantageous” and not based on lowest price, the approval of the Director of Legal and Democratic Services and the Director of Finance and ICT shall be sought prior to the commencement of the Tender process.
- 13.4. The evaluation criteria shall be logged with the Director of Legal and Democratic Services prior to the issuing of Tenders to Contractors.
- 13.5. Tenderers should be offered a debrief, whether successful or not, to assist them in preparing future bids. The relevant Executive Director shall also keep a record of all debrief requests and responses.

#### 14. AWARDING CONTRACTS

- 14.1. All Contracts shall be awarded in accordance with the evaluation criteria and accepted in accordance with the Scheme of Delegation.
- 14.2. Prior to final Contract award, the Contractor shall provide evidence of adequate insurance to cover both public and employers’ liability and professional indemnity (where appropriate) and produce such evidence before the commencement of the Contract at the reasonable request of the Executive Director.
- 14.3. For all Tenders over £50,000, a minimum of 10 calendar days mandatory standstill period is required between the communication of the notification of the Contract award decision and entering into the Contract, with day 1 being the day after the award decision is issued, by fax or email and in writing to all Tenderers. This is to allow Tenderers an opportunity to challenge the decision in accordance with the principles of EU law.
- 14.4. A register of all term /framework Contracts (Contracts Register) placed by the Council shall be kept and maintained by the Director of Finance and ICT. An Executive Director shall be responsible for ensuring the required Contract information is provided to the Director of Finance and ICT.
- 14.5. For all Tenders valued above £50,000, the decision to award a Contract shall be made in accordance with the table below: -

Level of Authority for Acceptance	Contract Value				
	Less than £1k	Between £1k and £5k	Between £5k and £50k	Over £50k to EU Threshold	Above EU Threshold
Acceptance by:	Authorised Officer (as per Departmental Scheme of Delegation)	Authorised Officer (as per Departmental Scheme of Delegation)	Authorised Officer (as per Departmental Scheme of Delegation)	Executive Director in consultation with Nominated Cabinet Member (i.e relevant Portfolio Holder)	Executive Director in consultation with Nominated Cabinet Member (i.e relevant Portfolio Holder)
Decision	eProcurement	eProcurement	eProcurement	eProcurement	eProcurement

<b>recorded on:</b>	system	system	system	system and EDRS	system and EDRS
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- 14.6. Contracts with a value of £50,000 or more shall be executed under the Council's common seal and shall therefore be signed by the Director of Legal and Democratic Services.
- 14.7. All contracts with a value of £50,000 or more, where the standard Terms and Conditions have been amended, and all Contracts over the EU thresholds shall be signed by the Director of Legal and Democratic Services.
- 14.8. Contracts under £50,000 shall be signed within each Directorate and follow each Directorate's Directorate Scheme of Delegation.
- 14.9. All contracts over £50,000 shall be logged on the Executive Decision Recording System (EDRS) and also the Council's eProcurement system.

## **15. E-PROCUREMENT**

- 15.1. The Council's eProcurement system shall be used to place all orders with suppliers. This includes all orders placed after quotations are received or a Tender process has been undertaken.
- 15.2. When placing an order based on a verbal or written quotation the details of the quotations received shall be attached to the electronic order utilising the quotation log template provided in the Procurement Code of Practice.

## **16. PERFORMANCE BONDS, GUARANTEES AND LIQUIDATED DAMAGES**

- 16.1. In the case of all Contracts valued above £50,000 the Director of Finance and ICT shall determine the degree of security (if any) required to protect the Council from a Contractor default. This may be a performance bond or some other form of financial or performance guarantee considered appropriate.
- 16.2. Where the estimated value of the Contract is £50,000 or under the Executive Director shall ensure adequate provision for a performance bond and/or parent company guarantee is contained within the Tender documents.

## **17. CONTRACT ADDITIONS, EXTENSIONS AND VARIATIONS**

- 17.1. The Executive Director following consultation with the Director of Finance and ICT and Director of Legal and Democratic Services, may extend the length of a Contract subject to the extension being provided for in the original agreement.
- 17.2. All decisions relating to extending the length of contracts shall be recorded on the Executive Decision Recording System (EDRS).
- 17.3. If the original Contract was subject to the EU Procurement Regulations, the Contract can only be extended within the parameters identified in the original EU Contract notice, or if the notice explicitly contained provision for extension.

- 17.4. If the Contract was not subject to the EU Procurement Regulations, any extension shall not take the total value of the Contract above the EU thresholds.
- 17.5. Once a Contract has expired or has been completed it cannot be extended.
- 17.6. Where the total Variations to any Contract are estimated to exceed the permitted Variation below, a written report(s) shall be submitted by the appropriate Executive Director to the Director of Finance and IT, who will recommend any further action.

Contract Value		Maximum Permitted Variation
Exceeding	Not Exceeding	
-	£500,000	10%
£500,000	£1,000,000	£50,000
£1,000,000	-	£50,000 or 2.5% (whichever is greater)

- 17.7. All variations to a Contract below the levels highlighted above shall be authorised in writing by the appropriate Executive Director.
- 17.8. All additions, extensions and variations shall be in the form of written instructions to the Contractor from the Executive Director.

## 18. TERMINATION OF CONTRACTS

- 18.1. The Director of Legal and Democratic Services shall be consulted with regard to any termination or proposed termination of any Contract.
- 18.2. Details of terminations shall be provided to the Director of Finance and ICT so that the Contracts Register can be maintained.

## 19. CLAIMS ARISING FROM CONTRACTS

- 19.1. Officers shall inform the Director of Legal and Democratic Services immediately of any claims (or anticipated claims) by or against contractors that are the subject of dispute between the Council and the contractor.
- 19.2. Claims arising in respect of matters not clearly within the terms of any existing Contract shall be determined by the appropriate Executive Director after having taken the advice of the Director of Legal and Democratic Services and the Director of Finance and ICT.
- 19.3. Where completion of a Contract is likely to be delayed, resulting in claims under the Contract, the appropriate Executive Director shall inform the Director of Legal and Democratic Services and the Director of Finance and ICT of the action taken or proposed.

## **20. MONITORING CONTRACTS**

- 20.1. The appropriate Executive Director shall ensure that all Contracts over £50,000 are monitored throughout the period of the Contract, and the Contractors performance is reviewed regularly.
- 20.2. Where the Total Value of the Contract exceeds the EU Thresholds, the Executive Director shall make a written report evaluating the extent to which the purchasing requirement and the Contract objectives were met by the Contract. This shall be done when the Contract is completed. Where the Contract is to be re-let, a provisional report shall also be available early enough to inform the approach to reletting of the subsequent Contract.

## **21. EXEMPTION OF CPRS**

- 21.1. Exemption from any of the provisions of these Contract Procedure Rules may be made
  - 21.1.1. by the Council, or
  - 21.1.2. by the Cabinet acting under delegated powers, or
  - 21.1.3. following consultation with the appropriate Executive Director, by an appropriate school governing body acting under delegated powers or where in any of the above cases the Council/Cabinet/School Governing Body are satisfied that the exemption is justified in special circumstances or
  - 21.1.4. where the Chief Executive or Deputy Chief Executive certify that the need for goods, materials, works or services is so urgent that other procedures cannot practicably be followed.
- 21.2. The Council shall be informed of the circumstances of every exemption made.
- 21.3. A record of any exemption made shall, if not made in the minutes of the Council, be made in the minutes of the Cabinet or school governing body concerned.
- 21.4. No exemption to these Contract Procedure Rules may be proposed unless the Executive Director is satisfied that:
  - 21.4.1. there are exceptional circumstances justifying departure from these Contract Procedure Rules;
  - 21.4.2. the exemption will not contravene any legal requirement;
  - 21.4.3. the report from the appropriate Executive Director is comprehensive and in the format required from time to time; and
  - 21.4.4. the report from the appropriate Executive Director provides evidence that the exception is necessary to achieve the Council's objectives and will achieve Best Value for the Council.

- 21.5. All exemptions shall be recorded in writing and logged on the Executive Decision Recording System (EDRS) and the appropriate Executive Director shall retain all associated documents. In addition, the Director of Finance and ICT shall maintain a central register of all requests for exemptions for audit purposes.

## **22. DEFINITIONS**

- 22.1. Within both the Contract Procedure Rules and the Procurement Code of Practice, the following definitions are used: -
- 22.1.1. "Contract" means an agreement in writing for consideration (money or money's worth) between the Council and a Contractor for the provision of goods, works or services;
  - 22.1.2. "Contractor" includes any sole trader, partnership or company (limited or unlimited) or any duly incorporated trade, professional or commercial body or voluntary body;
  - 22.1.3. "Contracts Register" means a comprehensive list of all term/framework contracts that the Council procures, detailing key attributes such as type, duration, value and contractor and procurement/Directorate contact details;
  - 22.1.4. "Contract Value" means the amount the Council pays to the Contractor under the Contract excluding VAT;
  - 22.1.5. "Director of Finance and ICT" means the Chief Officer designated under section 151 Local Government Act 1972 or his/her nominated representative;
  - 22.1.6. "Director of Legal and Democratic Services" means the Council's Principal Solicitor;
  - 22.1.7. "E-auction" is a means of carrying out purchasing negotiations via the Internet. It is a real time event that occurs online, allowing multiple Contractors in different geographic regions to place and modify bids simultaneously;
  - 22.1.8. "EU Procurement Regulations" means the Public Contracts Regulations 2006 (SI 2006 No.5) or such amendment or replacement thereof in time to time in force;
  - 22.1.9. "Executive Director" means an Officer defined as such in the Council's Constitution and shall include all Chief Officers;
  - 22.1.10. "Framework Agreement" means an agreement which allows the Council to call off services, goods or works from a Contractor in accordance with the terms of the agreement;
  - 22.1.11. "Goods" covers all supplies and materials that the Council purchases or obtains;
  - 22.1.12. "Invitation to Tender" means a request for Contractors to submit a Tender to supply or purchase goods, execute works or provide services at a stated price;
  - 22.1.13. "Key Decision" is defined as: -

A key decision is any decision which is likely to result in a local Council incurring expenditure which is, or the making of savings which are, significant having regard to the local Council's budget for the service or function to which any decision relates; or to be significant in terms of its effects on communities living or working in the area comprising two or more wards in the area of the local Council;

Key Decisions are those decisions which:

- 22.1.13.1. require an application to be made for planning permission, listed building, ancient monument or conservation area consent.
- 22.1.13.2. ii) comprise or include the making, approval or publication of a draft or final scheme which may require, either directly or in the event of objection, the approval of the Secretary of State or of a Minister of the Crown
- 22.1.13.3. iii) require the passage of local legislation or the adoption by the Council of national legislation
- 22.1.13.4. iv) propose a response on behalf of the Council to consultation by the Secretary of State or a Minister of the Crown
- 22.1.13.5. v) propose an alteration in the standard charges, which the Council makes for any of its services
- 22.1.13.6. vi) require the acquisition or disposal of any land or interest in land
- 22.1.13.7. vii) require a virement of funding within approved virement powers of officers
- 22.1.13.8. viii) are of such significance to the locality, the Council or services which it provides that the officer is of the opinion that it should be treated as a Key Decision.
- 22.1.13.9. ix) are "key decisions" as defined in the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulation 2000 or such amendment or replacement thereof in time to time in force.
- 22.1.14. "Most Economically Advantageous" means that criteria including the period from completion or delivery, quality, aesthetic and functional characteristics, technical merit, after sales service, technical assistance, ease of maintenance and price may be used as part of the evaluation of a Tender;
- 22.1.15. "Open Procedure" means a procedure for inviting Tenders by advertisement in which Tenders are sent to all Contractors who express an interest in tendering;
- 22.1.16. "Officer" includes any employee of the Council;
- 22.1.17. "Procurement" means the process leading to the award of a Contract;
- 22.1.18. "Purchasing Consortia" means an organised and constituted body of individuals who jointly participate in the procurement and a award of a Contract;

- 22.1.19. "Quotation" means an formal offer to supply or purchase goods, execute works or provide services at a stated price;
- 22.1.20. "Restricted Procedure" means a procedure for inviting Tenders where Contractors have been pre-qualified before being invited to submit a tender;
- 22.1.21. "Scheme of Delegation" means the document described as such within the Constitution;
- 22.1.22. "Services" includes all services, which the Council purchases or obtains including advice, consultancy work, agency staff or as otherwise defined within the EU Procurement Regulations;
- 22.1.23. "Supplies" means the provision of Goods or as otherwise defined within the EU Procurement Regulations;
- 22.1.24. "Tender" means a formal offer to supply or purchase goods, execute works or provide services at a stated price;
- 22.1.25. "Tenderer" shall mean any firm submitting a Tender;
- 22.1.26. "Tender Register" means a register of Tenders received in a Procurement containing the information prescribed by the Contract procedure Rules;
- 22.1.27. "Variation" means a change in nature or scope of a Contract altering the Contract Value;
- 22.1.28. "Works" means construction and repairs in respect of physical assets or as otherwise defined within the EU Procurement Regulations.