

10. CONTRACT STANDING ORDERS

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PART A - INTRODUCTION**DEFINITIONS**

Award Criteria	The criteria by which the successful Quotation or Tender is to be selected (see further Part B, Rule 4).
Best Value Legislation	The Local Government Act 1999.
Contracting Officer	Officer with responsibility for conducting purchasing processes for the purchase of works, supplies (goods) or services on behalf of the Council.
Contract	A written document or deed incorporating the contract terms between the Council and the supplier. In the case of procurement for Low Value Transactions this may be made by obtaining written quotations followed by the placing of a Purchase Order.
EU Threshold	The contract value at which EU public procurement directives must be applied, as advised in Information Note PPN xxx December 2019: £189,330 for the supply of goods or services and £4,733,252 for building, engineering and construction contracts. These values are subject to change and you should contact the Procurement Service to check the current value
Estimated Contract Value	<p>The estimated contract value shall be calculated as follows:</p> <ul style="list-style-type: none"> (a) 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; (b) where the purchase involves recurrent transactions for the same type of item, and the terms of the contract are to be annually renewable by aggregating the value of those transactions in the coming 12 months; (c) where the contract is for an indeterminate duration by multiplying the monthly payment by 48; (d) for feasibility studies: the value of the scheme or contracts which may be awarded as a result; (e) for nominated suppliers and sub-contractors: the estimated contract value shall be the value of that part of the main contract to be fulfilled by the nominated supplier or sub-contractor.

Financial Procedure Rules	The council's rules relating to financial procedures in Part 4 of the council's constitution and available on the council's website.
Framework Agreements	A contract, also called a call-off contract, between the Council and one or more contractors that sets out the terms (in particular the price and, where appropriate, quantity) under which the contractor will supply goods or services to the Council in the period during which the framework contract applies.
Head of Service	An officer of the Council employed above grade 7 and where an Executive Director has service responsibilities then they shall be deemed to be a Head of Service for the purposes of these Rules.
Invitation to Tender	Formal document combining an invitation to tender and instructions regarding the process. Usually issued with a Specification/Bill of Quantity and draft Contract conditions. The requirements for an Invitation to Tender are in Part B Rule 8.
Key Decision	A decision as defined within Part 2, para. 3.12 of the Constitution.
Officer Code of Conduct	The code of conduct binding on all officers of the Council and being within Part 5 of the Council's Constitution and viewable on the Council's website.
Open Tender Procedure	A tendering procedure where the invitation to tender is publicly advertised and all tenders received are evaluated.
Nominated Suppliers and Subcontractors	Those persons specified in a main contract for the discharge of any part of that contract.
Partnering Arrangements	A partnering arrangement will provide a structure within which a specific contract for the supply of goods, services or works may be formally developed between the Council and the preferred provider without the need to comply with these Rules.
Performance Bond	An "insurance policy": if the contractor does not do what it has promised under a contract with the Council, the Council can claim from the surety (usually a bank), the sum of money specified in the Bond. A Bond is intended to protect the Council from additional costs arising from the contractor's failure.
Purchase Order	An order for the supply of goods or services placed through the Council's purchasing system E Series.

Quotation	A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).
Scheme of Delegation	The Scheme of Delegation in Part 3 of the council's constitution and being available on the council's website.
Supplier	This includes suppliers of goods, works or services provided to the Council whether by an individual, supplier, company or consortium.
Tender Opening Sheet	The log recording details of Tenders, received and opened. (see Part B Rule 9)

1. PURPOSE

1.1 By law, Rushmoor Borough Council must make standing orders with respect to contracts for the supply of goods or services or for the execution of works which provide for:

- (a) securing competition; and
- (b) regulating the manner in which tenders are invited.

1.2 These Contract Standing Orders (the Rules) are the Council's rules for buying for the council and form part of Rushmoor Borough Council's Constitution.

1.3 Every contract made by or on behalf of the Council shall comply with:-

- The Council's Contract Standing Orders (the Rules)
- The Council's Financial Procedure Rules
- All relevant statutory provisions including the Local Government Act 1988 Part II, Local government Act 1999, Local Government Act 2000, the Public Contract Regulations 2015, the Local Government (Contracts) Act 1997 and the Localism Act 2011;
- European Treaties and European Directives;
- Public Contracts Regulations 2015
- Small Business, Enterprise and Employment Act 2015
- The Public Services (Social Value) Act 2012
- European Union (EU) rules on State Aid
- Any direction by the Council; the cabinet or committee having appropriate delegated authority

1.4 These Rules have two main purposes:

- (a) To comply with the obligations that govern spending of public money such as the EU Procurement Directives as implemented into UK law by the Public Contract Regulations 2015 to ensure that the Council obtains Best Value in the way money is spent, so that the Council in turn may offer better and more cost-effective services to the public; and
- (b) to protect the Council and its officers from undue criticism or allegations of wrongdoing.

1.5 The Corporate Manager (Legal Services), in consultation with the Executive Head of Finance, will investigate any incidences of non-compliance with these Rules and is responsible for keeping the Rules under review.

1.6 The Procurement Service is responsible for providing advice on these Rules.

2. **RESPONSIBILITIES**

2.1 **Corporate Leadership Team/Heads of Service** shall:

2.1.1 Oversee the arrangements for procurement within their service areas to ensure they are operating effectively

2.1.2 Strategic Leadership of procurement within their service areas.

2.1.3 Ensure that every officer within their service areas is aware of these Rules and that they are observed

2.1.4 Ensure that all officers whom are authorised to act as Contracting Officers are properly trained and monitored

2.1.5 Be responsible for authorising an officer to act as the Contracting Officer in relation to a procurement

2.2 **Contracting Officers** shall:

2.2.1 Comply with these Rules and observe the integrity of the tender process

2.2.2 Comply with the relevant statutory provisions and the council's requirement relating to declarations of interest affecting any purchasing process

2.2.3 Ensure that there is any appropriate analysis of the requirement, timescales, procedure and documentation to be used

2.2.4 Ensure that the provisions relating to advertising are complied with

2.2.5 Ensure that the purchasing process, from planning to delivery incorporates (where appropriate) principles of sustainability, efficiency, whole life costing and cost savings

2.2.6 Comply with the Council's decision-making processes including recording of Executive Decisions

2.2.7 Seek advice from Democracy, Strategy and Partnerships as to the procedure to be followed if the procurement is a Key Decision

2.2.8 Advise the Procurement Service of all contracts of a value of more than £5,000 for inclusion on the contracts register

- 2.2.9 Ensure that proper records of all contract award procedures, waivers, exemptions and extensions are maintained with separate files for each purchase of a value of £50,000 or more
- 2.2.10 Ensure that value for money is achieved
- 2.2.11 Ensure that adequate and appropriate security (such as a bond or guarantee) is taken to protect the Council in the event of non-performance
- 2.2.12 Ensure that any contract includes the mandatory conditions of contract
- 2.2.13 Monitor the performance of the contract throughout its term
- 2.2.14 Seek appropriate advice from the Procurement Service, Executive Head of Finance or the Corporate Manager (Legal Services)
- 2.2.15 Have regard to additional procurement guidance placed on the Council's intranet
- 2.2.16 Ensure that any consultant managing a procurement process on behalf of the council, is provided with copies of these Rules and that they are adhered to

2.3 **All employees** shall

- 2.3.1 Report breaches (whether actual or suspected) of these Rules to the Corporate Manager (Legal Services) and the Executive Head of Finance

3. **COMPLIANCE WITH THESE RULES**

- 3.1 These Rules apply to all relevant contracts (Relevant Contracts) made (including all Purchase Orders placed) by, for or on behalf of the Council. Relevant Contracts include arrangements for:
 - (a) The supply or disposal of goods
 - (b) The hire, rental or lease of goods or equipment
 - (c) The provision of works and supply of works materials
 - (d) The provision of services, including consultancy services
 - (e) The granting of works concessions or services concessions
 - (f) The selection of sub-contractors by the Council, where these are nominated under the main contract
- 3.2 Relevant Contracts include contracts between the Council and any other contracting party, including:
 - (a) Other public bodies, including other local authorities
 - (b) Voluntary and community sector organisations acting as suppliers to the Council
 - (c) Private sector suppliers to the Council

- 3.3 The list in 3.1 is indicative and should not be classed as all-inclusive. Contracting Officers should seek advice from the Procurement Service or Executive Head of Finance if they are unclear whether their purchasing decision will be covered by these rules.
- 3.4 A suite of tender documents and procurement advice will be available from the Procurement Service and published on the Council's intranet.
- 3.5 The Rules govern the method by which the Council spends money on the supplies, services and works which the Council needs to deliver its services. They apply only when officers need to buy something from outside the Council.
- 3.6 The Rules apply to any contract (including a Purchase Order) that results in a payment being made by the Council. They also apply to some types of contracts where a service is being provided for the Council which results in income being generated for the Council.
- 3.7 The Rules do not cover grants which the Council may receive or make except where the grant is the form of payment for a contract for services where the Council specifies the output or outcomes to be delivered.
- 3.8 The Rules do not apply to:
 - 3.8.1 the purchasing of land or of any interest in land
 - 3.8.2 contracts of employment of staff
 - 3.8.3 purchases using a collaborative arrangement as the lead authority's CSO's will have been adhered to
 - 3.8.4 Contracts for retention of legal counsel and the appointment of expert witnesses in legal proceedings
 - 3.8.5 Service level agreements setting out the conditions which the Council applies to its funding of particular voluntary sector bodies.
- 3.9 The Council's "Best Value Duty" is very important. It means that the Council must always consider how each procurement is consistent with the Council's duty to secure continuous improvement in what it does having regard to economy, efficiency and effectiveness. The procurement route is important here too. Officers therefore need to question whether the Council should be buying anything at all and if the Council should do, whether the Council can do it internally, or jointly, or rely on someone else to get better value.
- 3.10 Government and EU Public Procurement Policy require that the Council must permit, and be seen to be permitting, freedom of opportunity to trade with the Council and to be open and transparent about how the Council buys things. If the Council fails in this duty an external party may have cause to lodge a complaint against the Council and may be able to claim damages.

- 3.11 If officers are in any doubt about whether the Rules apply, they must always check with the Procurement Service.
- 3.12 The Officer Code of Conduct requires that officers must follow these Rules when buying for the Council. If officers do not follow the Rules and / or fail to enter into a contract on behalf of the Council in accordance with these Rules then they will have breached the Code of Conduct and this could be a disciplinary matter.

PART B - PRE-CONTRACT PROCEDURES

1. Authority to Purchase

- 1.1 Heads of Service must ensure that procurements undertaken within their service by their Contracting Officers, comply with the requirements of the Council's Scheme of Delegation and Financial Procedure Rules. Before starting a procurement process the relevant delegated authority or approval must be in place, according to whether the cost of the contract is being met from a revenue or capital budget
- 1.2 **Revenue Budget**
The Head of Service may approve the procurement of any contract for the supply of services, goods or works that will incur any revenue expenditure contained within an approved budget in accordance with these Rules
- 1.3 **Capital Budget**
For any contract that will incur capital expenditure from an approved budget, the Head of Service shall consult with the relevant portfolio holder prior to proceeding with the procurement process in accordance with these Rules
- 1.4 Internal audit maintain a list of authorised signatories for all service areas which identifies the Contracting Officers authorised to sign orders, contracts, invoices and payments and details the limits within which they may buy things for the Council. Contracting Officers must not exceed their limits without the authorisation of the Executive Head of Finance
- 1.5 Heads of Service must ensure that procurement is undertaken by authorised Contracting Officers who can demonstrate knowledge and understanding of the Rules and skills appropriate to the task. These Contracting Officers should already have authority under the list of financial authorisation limits and if not must be granted by the Executive Head of Finance
- 1.6 Notwithstanding the authority granted to Heads of Service and their Contracting Officers by the Executive Head of Finance , all procurements for works, supplies and services where the estimated contract value is £50,000 or above must go through the Procurement Service for advice and then be managed by the Contracting Officer approved by the Head of Service for the procurement .
- 1.7 Heads of Service must ensure that there are the funds in the budget and the necessary budget approval prior to commencing a procurement procedure

- 1.8 In addition, where the procurement is a 'Key Decision', all appropriate steps must be taken in accordance with the constitution.

2. Defining the Need

- 2.1 As a minimum, Contracting Officers must clearly and carefully identify and specify the supplies, services or works required together with the terms for payment; the agreed programme for delivery, a certain duration for the contract, the terms for payment and any other terms and conditions.
- 2.2 The size, scope and specification of the supplies, services or works and award criteria must be decided in advance of the procurement process.
- 2.3 Contracting Officers must define the duration of the contract that will provide the most economically advantageous outcome for the Council and not to avoid or delay the requirement to conduct a subsequent future procurement process. This decision must be made in advance of the procurement process.
- 2.4 Under the Best Value Legislation Contracting Officers must consider the options for the delivery of the required supplies, services or works. The options are
- Not buying the supplies or services or having the works done at all;
 - Providing the supplies, services or works in house;
 - Using a third party to provide the ongoing supplies, services or works;
 - By commissioning jointly with another council; and/or
 - Shared service delivery with another council

3. Rules for all contracts

3.1 Valuation of Contracts

- 3.1.1 An estimated contract value **must** be established at the start of the procurement process.
- 3.1.2 If the procurement is related to another procurement or is for supplies , services or works which are or may also be procured by another service area of the Council or on a recurring basis this could affect the contract value for the purpose of these Rules (that is, the requirement for aggregation may apply). In such circumstances you must seek the advice of the Procurement Service.
- 3.1.3 The contract value means the estimated total value over the full duration of the contract, including any extension options. It is **not the annual value**.
- 3.1.4 Where the duration of the contract is indeterminate, the contract value should be the estimated value of the contract over a period of four years

3.1.5 Where the contract does not indicate a total price, the contract value should be the expected value of payments over its full duration or over four years where the contract duration is indeterminate

3.1.6 The value of contracts **must never** be deliberately or artificially underestimated or split to avoid the application of procedures set out in these rules.

3.2 Contractor Quality

3.2.1 For all contracts regardless of value, a contractor must be selected who:

- (a) Can confirm a business contact address and telephone number;
- (b) Has an acceptable level of insurance in accordance with Part B rule 14.4
- (c) Can demonstrate a level of expertise and experience appropriate to the services, goods or works required; and
- (d) Is registered for tax and holds a valid certificate (where appropriate).

3.2.2 For contracts with an estimated value in excess of £50,000 a contractor must, where required, be selected who can evidence sufficient financial stability.

3.3 Purchase Orders

3.3.1 For the purchase of services, goods or works estimated at a value of less than £50,000, the Contracting Officer should normally consider using a Purchase Order which refers to the standard terms and conditions prescribed for Purchase Orders.

3.3.2 For contracts below £50,000 which have some level of complexity it may be appropriate to use conditions of contract instead of a Purchase Order terms and conditions in order to safeguard the Council's legal position. In such cases, the Contracting Officer should consult the Procurement Service and if necessary, the Corporate Manager (Legal Services). For any contract for works, the Procurement Service must be consulted to determine whether the contract should be made under seal to extend the limitation period to 12 years.

4. Award Criteria

4.1 Award Criteria appropriate to the procurement must be defined and included in the invitation to submit a quotation/tender documentation (Invitation to Tender). It must be designed to secure an outcome giving best value for the Council. The usual criterion shall be:

- (a) **“Most economically advantageous”** offer (where the Council needs to ensure that an appropriate and/or minimum level of expertise/quality is provided. This will usually (but not exclusively) apply to Medium-value contracts exceeding £50,000, i.e. where a tender exercise is required.

- (b) **“Highest price”** if payment is to be received by the Council.

4.2 As a general guide where ‘most economically advantageous’ is used the split between price and quality should be on a 60/40% respective split. Advice should be sought from the Procurement Service on this issue but any deviation from this split i.e. if the cost percentage is to be lower, must be approved by the appropriate Head of Service in consultation with the Executive Head of Finance.

5. Collaborative procurement (Framework Agreements)

5.1 In order to secure best value, the Council may make use of collaborative procurement arrangements. Such arrangements may include, for example, collaborative contracts let by:

- (a) Other local authorities
- (b) Public Sector purchasing consortia
- (c) Other UK contracting authorities

5.2 A Framework Agreement is an agreement with one or more contractors that sets out the terms and conditions under which specific purchases can be made (or ‘called off’) throughout the term of the agreement.

5.3 Further information and advice on framework agreements including whether it is appropriate to use a framework agreement and how to access it can be obtained from the Procurement Service and from the procurement section on the Council’s intranet.

5.4 The use of a Framework Agreement should be considered when carrying out the initial Pre-contract procedures (Section B of these Rules paragraph 2).

6. Quotation and Tender Procedure

6.1 The Rules vary according to the value of the contract with stricter more rigorous procedures for higher value transactions. This is to ensure that the benefits of a more thorough, complex process are not outweighed by the cost relative to the value of supplies, services or works in question.

6.2 For the highest value contracts, the Council is obliged to follow the full EU Procurement Directives as implemented into UK law by the Public Contracts Regulations 2015

6.3 The table below indicates the relevant procedure to be followed for different levels of contract value:

Estimated contract Value (Ex VAT)	Procedure
<ul style="list-style-type: none"> • £189,330 or over for supplies and services • £4,733,252 or over for works 	Contracting Officers must follow the EU procurement procedures or framework

NB these limits are subject to revision and the below link should be used to check the current threshold http://www.ojec.com/threshholds.aspx	
£50,000 up to EU Procurement levels for supplies, services and works	Contracting Officers must follow the procedure for medium-value transactions. Or framework
£5,000 up to £49,999	Contracting Officers must follow the procedure for low-value transactions band 2 3 Quotes or RFQ or framework
Below £5,000	Contracting Officers must follow the procedure for low-value transactions. Band 1 At least 1 quote or framework

6.4 EU Procurement procedures

- 6.4.1 For transactions valued at EU procurement thresholds the procurement **must** be conducted in accordance with the EU procurement procedures specified in the Public Contract Regulations 2015.
- 6.4.2 All EU procurement procedures **must** be managed by the Procurement Service in consultation with the Corporate Manager (Legal Services)
- 6.4.3 Advice on the type of EU procurement procedure to be used **must** be sought from the Corporate Manager (Legal Services) and/or the Procurement Service and approved by the Corporate Manager (Legal Services)
- 6.4.4 Further guidance is available on the Council's intranet or from the Procurement Service

6.5 Medium value transactions

- 6.5.1 For transactions valued from and including £50,000 to EU Thresholds, the medium value transactions procurement procedure **must** be followed where a formal tender process **must** be conducted as described below.
- 6.5.2 For all medium value transactions, the tender process **must** be agreed by the appropriate Head of Service following receipt of advice from the Procurement Service and managed either by the Procurement Service or such other person as the Procurement Service agrees
- 6.5.3 A Procurement start up document **must** be completed and submitted to Procurement Service unless otherwise agreed by the Procurement Service. The assistance of the Procurement Service is available to assist officers in

completing this document. This start up document will require evidence of budgetary provision from the Head of Service.

6.5.4 The contract opportunity and relevant documents **must** be advertised at the start of the tender procedure and the procurement service will arrange to do this.

6.5.5 The tender procedure **must** be an Open tender (all interested suppliers submit a tender in response to an advertisement);

6.5.6 Where a relevant Framework Agreement exists it should be explored and considered in preference to carrying out a full tender process as such agreements can provide cost and time saving benefits.

6.6 **Low-value transactions Band 2**

6.6.1 For transactions valued from and including £5,000 to £49,999 for supplies, services and works, the low value (band 2) transactions procurement procedure **must** be followed where at least three written quotations **must** be invited from capable suppliers before a Purchase Order is issued.

6.6.2 Where a relevant Framework Agreement exists and is to be used then the terms of the framework agreement must be followed

6.6.3 The Purchase Order **must** specify the supplies, services or works to be provided, the price to be paid and the terms of payment.

6.6.4 The Purchase Order will refer to RBC's standard form of terms and conditions of purchase which are on the Council's website. A quotation and a Purchase Order will create a legally binding contract. The Purchase Order is used to formalise the terms of the contract.

6.6.5 If only one quotation is received the Contracting Officer **must** seek more quotations or obtain an exemption from the Rules in accordance with Rule 22 of these Rules.

6.6.6 Emailed quotations and screen prints are acceptable but copies **must** be retained in accordance with the Council's document retention policy.

6.6.7 Further guidance can be provided by the Procurement Service and is available on the intranet

6.7 **Low-value transactions Band 1**

6.7.1 For transactions valued up to £5,000 for supplies, services and works, the low-value band 1 transactions procurement procedure **must** be followed where at least one written quotation **must** be obtained from a capable supplier before a formal Purchase Order is issued.

6.7.2 Where a relevant Framework Agreement exists and is to be used then the terms of the framework agreement must be followed

6.7.3 The Purchase Order **must** specify the supplies, services or works to be provided, the price to be paid and the terms of payment.

6.7.4 The Purchase Order will refer to RBC’s standard form of terms and conditions of purchase which are on the Council’s website. A quotation and a Purchase Order will create a legally binding contract. The Purchase Order is used to formalise the terms of the contract.

6.7.5 Emailed quotations/screen-prints are acceptable but copies **must** be retained

6.7.6 Further guidance is provided by the Procurement Service and is available on the intranet

7. Public Notice/Advert

7.1 The requirement for advertising opportunities is summarised in the table below:

Total Contract Value	South East Business Portal(SEBP)	Publication /Trade Journal	OJEU	Contract Finder (if opportunity to be advertised)
£25,000-£49,999	Optional	Optional	Optional	Required
> £50,000	Required	Optional	Optional	Required
Above EU Threshold	Required	Optional	Required	

7.2 The Procurement Service will place the advert as part of the procurement process

8. Invitation to Tender

8.1 For all procurements over £50,000 (medium-value contracts), officers must consult the Procurement Service on whether the procurement must be conducted through the Council’s e-procurement system to make sure the procurement process is as efficient as possible. It is mandatory for EU tenders to be run electronically. This includes all communication and information exchanged during the process, including the submission of tenders. Use of the e-tendering system should be carried out with the support of the Procurement Service in accordance with the approved procedures implemented in that system.

8.2 Invitations to Tender should be sent to all who express an interest if a below EU Procurement thresholds. We cannot pre-qualify. The Invitation to Tender should specify a period of not less than 2 weeks for the return of tenders. This can be amended accordingly to reflect the complexity of the

tender document.

8.3 Where using a Framework Agreement, this may provide for carrying out a mini-tender exercise. In such cases, the rules of the Framework Agreement will govern the process where there is any conflict with these Rules

8.4. As a minimum, the Invitation to Tender needs to contain:

8.4.1 The Specification

8.4.2 Evaluation Criteria and weightings

8.4.3 The contract length and start date

8.4.4 The Tender submission date and rules regarding submission

8.4.5 The terms and conditions of contract

8.5 The Procurement Service will assist with the preparation of tender documentation and will liaise with the Corporate Manager (Legal Services) where necessary.

8.6 The Invitation to Tender is required to be ready for publication at the same time as the advert.

9. Receiving and opening tenders

9.1 Responses to an invitation to tender **must** be received according to the format of response specified in the Invitation to Tender and no later than the time specified for submission of tenders in the Invitation to Tender.

9.2 For all tenders received via the e-tendering system the 'locked box' must only be opened after the deadline for submission has passed in the presence of two officers from the Executive Head of Finance's Team who are not involved in managing the project. Details of the opened tenders, including title/reference number of tenders, name of tenderers and prices, must be recorded in the Tender Opening Sheet or electronically. Late tenders **must** remain unopened until after the tenders properly received have been opened and the procedures set out in rule 9.3 below complied with.

9.3 For tenders conducted through paper-based methods, tender responses **must** be retained in a secure place until the time specified for their opening. For medium and high value transactions three officers of the Council including one officer from the Procurement Service **must** open all tenders at the same time and record the tenders. For low value transactions this can be undertaken by three officers without representation from the Procurement Service. Late tenders **must** be retained unopened until after the tenders properly received have been opened. The supplier **must** be notified of its exclusion on account of submitting its tender late. If no response from that supplier is received within a reasonable period then the unopened late tender **must** be returned to the supplier but if the supplier challenges the decision then the unopened late tender **must** be retained until Procurement Service and the Corporate Manager (Legal Services) confirm that it may be returned to the supplier. Opened and rejected tenders as well as invited

bidders who did not submit a tender **must** be recorded on a Tender Opening Sheet.

10. **Evaluating quotations and tenders**

- 10.1 For medium value transactions the tenders should be objectively evaluated by a panel of three officers including one officer from the Procurement Service using the Award Criteria.
- 10.2 For low value transactions tenders should be objectively evaluated by a panel of three officers using the Award Criteria.
- 10.3 Where the most economically advantageous evaluation is used, any resulting contract **must** be awarded to the bidder who submits the most economically advantageous bid that is the quotation or tender that achieves the highest score in the objective assessment.
- 10.4 The results of the evaluation process **must** be recorded and all tenderers must be formally notified of the results either in writing or electronically.

11. **Awarding contracts and Audit Trails**

- 11.1 A contract **must** only be awarded and signed by a person authorised to do so in the Scheme of Delegation subject to receipt of confirmation from a Head of Service or Procurement Service (or finance officer) that the appropriate budget holder has the funds in place to sustain the contract prior to award.
- 11.2 For all contracts where the contract value exceeds £100,000 the contract **must** either:
 - 11.2.1 Be made under the authority's seal in accordance with rule 24 of the Council's Standing Orders for Regulation of Council Business; or
 - 11.2.2 Signed by at least two officers authorised by the Corporate Manager (Legal Services). The decision as to whether to sign or to seal a contract shall rest with the Corporate Manager (Legal Services). For the avoidance of doubt, no contract shall be either be attested by or signed by any member.
- 11.3 For contracts where the contract value is up to £100,000, the contract may be signed by a single officer with delegated authority unless the Corporate Manager (Legal Services) requires it to be made under the authority's seal
- 11.4 A full and complete audit trail of all procurement activity resulting in the award of a contract **must** be retained in electronic or hard-copy format as appropriate.
- 11.5 Contracts procured under the EU procurement directives have a special award procedure which must be adhered to. Guidance on this can be obtained from the Procurement Service

- 11.6 When acting under a general delegation in awarding a contract, Contract Officers must make an appropriate record of the decision and notify democratic services.

12. **Ordering and Paying for Supplies, Services and Works**

- 12.1 Notwithstanding the fact that a contract may have been awarded, official orders **must** still be placed on suppliers in accordance with the Council's Financial Procedure Rules.

- 12.2 No pre-payment for supplies, services or works (other than those purchased with a corporate credit card) **may** be made without the prior written consent of the Executive Head of Finance and the Monitoring Officer.

13. **Contracts Register**

- 13.1 In accordance with the Local Government Transparency Code 2014, once a contract over £5,000 in value has been awarded, the Procurement Service must be notified of the following information so that the Contract Register can be updated:

- (a) Contract Title;
- (b) Supplier Name and registered company number
- (c) Contract term including details of any provisions for extension;
- (d) Contract Start Date;
- (e) Total contract value; and
- (f) Name of Contract Manager.

- 13.2 As part of the Council's commitment to be open and transparent with its residents, since October 2010 a list of all payments over £500 made to suppliers and contractors has been published on the council website. In addition, disclosure of expenditure details may be required under the Freedom of Information Act.

- 13.3 If an existing Framework Agreement is utilised the Procurement Service must be notified of the following so that a record can be held:

- (a) Framework title and Reference Number (if applicable);
- (b) Lead buying organisations name;
- (c) Supplier Name;
- (d) Details of services/supplies purchased; and
- (e) Value of services/supplies purchased.

14. **Contents of Contracts**

14.1 **General**

- 14.1.1 Where a contract is estimated at a value over £50,000 and/or for any contract of an unusual or complex nature or is for the appointment of consultancy services, the Procurement Service and if necessary the

Corporate Manager (Legal Services) should be consulted to produce a suitable set of conditions of contract or pre-approved standard terms and conditions may be used.

14.1.2 Every contract must be made in writing, under English Law and comply with the requirements in rule 11.2

14.1.3 Every contract shall specify:-

14.1.3.1 the work, supplies or services to be undertaken or supplied;

14.1.3.2 the price to be paid with a statement of discounts or other deductions;

14.1.3.3 a condition requiring valid undisputed invoices to be paid by the Council within 30 days and a condition requiring a supplier to impose such condition in any subcontracts

14.1.3.4 the time or times within which the Contract is to be performed and, where appropriate, the amount of liquidated damages which may otherwise become due;

14.1.3.5 insurance provisions; and

14.1.3.6 the conditions of the Contract.

14.2 Performance Guarantees

14.2.1 If over £100,000 the Council shall require the Contracting Body to give sufficient security for the due performance of the contract. This can be

(a) a Performance Bond in the following sums

Contract Value	Amount of Security
£100,000 to £1,000,000	10% (inclusive of VAT)
Over £1,000,000	5% (inclusive of VAT);

or

(b) a retention until expiry of the defects liability in such sum as shall be agreed in writing between the Contracting Officer and Head of Finance

14.2.2 If a performance bond is required to be provided the Contracting Officer shall arrange through the Executive Head of Finance for the financial status of the bondsman to be investigated and if satisfactory approved.

14.2.3 The Executive Head of Finance may determine that for contracts where the Council will not or is unlikely to suffer loss or that any loss will be small such as those for:

(a) maintenance or

(b) the supply of goods paid for upon invoice following delivery

that no performance bond or retention is required. Approval to dispense with a performance bond should be obtained in writing.

14.3 Liquidated Damages

14.3.1 Where a Contract is for the execution of works, the provision of services or supplies by a particular date or series of dates, the appropriate Head of Service in consultation with the Procurement Service shall determine whether it should contain provision for liquidated damages.

14.4 Insurances

14.4.1 Where the Council is procuring works or services, evidence of public liability insurance as part of the contractors self-certification exercise must be provided by the contractor and maintained throughout the period of the contract.

14.4.2 The value of Public Liability Insurance must not be less than £10,000,000 or such other sum as the Executive Head of Finance may advise.

14.4.3 Where the contractor is providing a professional service, the Executive Head of Finance should be consulted to establish if Professional Indemnity insurance is appropriate and the sum to be required.

14.4.4 Where the contract extends beyond the expiry date of current insurances the Contracting Officer shall ensure that copies of renewal certificates are obtained and examined.

14.5 Construction Industry Tax Certificates

14.5.1 The Contracting Officer shall, where it is a lawful requirement, ensure that the contractor has produced for inspection a current C.I.S.5 or C.I.S.6 (sub-contractors) Tax Certificate and a copy provided to the Head of Finance.

14.6 Contract Clauses (all contracts)

14.6.1 Non-assignment or transfer of contract

Every written Contract shall include a clause to prevent the Contractor from transferring or assigning the Contract either directly or indirectly, without the written consent of the Council and to prevent the sub-letting of the Contract except to the extent permitted in writing by the appropriate Head of Service.

14.6.2 Prevention of Corruption

Every written Contract shall include a clause to secure that the Council shall be entitled to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation if, in connection with the Contract, the contractor commits an offence under the Bribery Act 2010 or gives any fee or reward the receipt of which is an offence under s.19(2) of the 1972 Act, or has directly or indirectly canvassed any member or officer,

or has obtained or attempted to obtain information concerning any other tender or otherwise acts in a similar unlawful manner.

14.6.3 Termination Provisions

Every written Contract shall include a clause to secure that, should the contractor fail to carry out the works, provide the services or deliver the supplies or any part thereof within the time specified in the Contract or fall within the circumstances prescribed in regulation 73 of the Public Contract Regulations 2015, the Council, without prejudice to any other remedy available, shall be at liberty to terminate the Contract either wholly or to the extent of such default and execute the works, procure the services or purchase other supplies to make good such default or in the event of the Contract being wholly terminated the remainder of the works to be executed, services to be provided or the supplies remaining to be delivered. Such clause shall further secure that the amount by which the cost of so executing the works, so procuring the services or so purchasing other supplies exceeds the amount which would have been payable to the contractor in respect of the works, services or supplies shall be recoverable from the contractor.

14.7 Specific Conditions

14.7.1 Where appropriate, every contract must provide for compliance with all relevant legislation including:

- a) The European Convention on Human Rights
- b) Race Relations, Age and Sex Discrimination (Equalities Act)
- c) Health and Safety at Work
- d) General Data Protection Regulation
- e) Disability Discrimination
- f) Freedom of Information

14.7.2 Every contract must provide for information to be reasonably requested by the Council and provided by the supplier in relevant cases regarding:

- a) Race Relations & Equalities Matters
- b) Best Value
- c) Transfer of Undertakings and Protection of Employment
- d) Open book accounting

14.8 Standards

- 14.8.1 All goods, materials and workmanship must be specified by reference to any relevant European or International Specification or Standard or, if there are none, to any relevant British Specification or Standard.
- 14.8.2 Goods and materials shall not be specified by reference to a particular make, source or process which has the effect of favouring or eliminating particular contractors or suppliers, except when this is unavoidable because of the subject matter of the contract or the absence of relevant specifications or standards. When goods and materials are so specified, the contract shall permit the successful contractor to propose suitable alternatives.

15. Managing contracts

- 15.1 For each Medium-value contract, i.e. over £50,000, the Head of Service must designate an appropriate lead officer as primary contact and Contract Manager.
- 15.2 For particularly large and/or strategically important contracts, the Head of Service should consider the appointment of a dedicated project manager, who should be supported by other professional disciplines, prior to the award of the contract

16. Variations and Extensions

- 16.1 As well as complying with any statutory restrictions including regulation 72 of the Public Contract Regulations 2015 and compliance with these Rules, Heads of Service may only authorise an extension to an existing contract where an extension for the particular period is provided for within the terms and conditions of the contract (and provided that there has been satisfactory performance).
- 16.2 Subject to any statutory restrictions and compliance with these Rules, Heads of Service with appropriate delegated power may authorise any other variation to an existing contract, and if relevant a consequent change in price, determined in accordance with the contract terms where the annual value of the variation is less than £25,000 or 10% of the original annual contract value (whichever is the lesser).
- 16.3 Any variations to an existing contract, and if relevant a consequent change in price, determined in accordance with the contract terms where the annual value of the variation is greater than £25,000 or 10% of the original annual contract value (whichever is the lesser) **must** be authorised by the Head of Finance.
- 16.4 No extension or variation may be granted to any contract not awarded under the EU procurement procedures where the value of the extension or variation results in the contract value exceeding the EU procurement procedures thresholds.

- 16.5 All extensions and variations to an existing contract **must** be checked to confirm that they represent best value and they are not being instigated solely to avoid or delay the requirement to conduct a procurement.
- 16.6 All extensions and variations to a contract awarded under the EU Procurement Directives **must** be authorised by the Corporate Manager (Legal Services) and the Executive Head of Finance having regard to the Public Contract regulations 2015.
- 16.7 All extensions and variations **must** be documented and signed by an authorised signatory on behalf of the Council and counter-signed by the supplier.

17. **Conflicts of Interest and corruption**

- 17.1 Any interest which may affect the award of a contract under these Rules **must** be declared. Such interests may include the ownership of shares in a potential supplier, previous employment by a potential supplier or the employment of a family member by a potential supplier. Any officer of the Council participating in a contract award decision or Contract Officer managing the procurement **must** provide the Corporate Manager (Legal Services) with a written declaration of any such interests.
- 17.2 The Corporate Manager (Legal Services) **must** either certify that such interests are acceptable or take any necessary action in respect of potential conflicts of interest and the officer should not participate in the award of the contract by the Council.
- 17.3 Officers should be aware of other requirements of the Council's Constitution with regard to conflicts of interest, bribery and corruption.

18. **Business Continuity**

- 18.1 Critical contracts i.e. those linked to the critical activities identified in each Services impact assessment and any contract that could have a major impact on delivery if the awarded contractor was unable to operate / provide their service for a period of time, should be identified at the beginning of the tender process. This should also include instances where there is only one company that is able to supply a service to the council.
- 18.2 For further advice please contact the Procurement Service.
- 18.3 To minimise the risk of disruption in the delivery of such contracts, business continuity plans should be requested from tenderers and this should form part of the tender evaluation.

19. Partnering Arrangements

19.1 Where it is determined that a Partnering Arrangement is appropriate then these Rules shall be complied with based on the estimated value of the project.

19.2 Partnering Arrangements should:

- (a) be based on a shared understanding of what the desired outcome is and which elements are to be provided by each party;
- (b) be focused on benefits - not just on time and cost;
- (c) have a shared understanding of which party is managing particular elements of risk;
- (d) (for long term contracts) be able to cope with changing customer requirements and technology developments; and
- (e) be capable of implementing effective and efficient procurement.

19.3 Partnering Arrangements may be appropriate where

19.3.1 a long term relationship, usually at least over five years, is anticipated where customers and providers adopt long term rather than short term views.

19.3.2 there is a need for:

- (a) business change, especially where innovation is required and/or the future is uncertain;
- (b) using new methods of service delivery (such as providing services online);
- (c) flexibility in constructing teams, involving specialist skills or scarce resources; and
- (d) outsourcing business processes or services, perhaps to allow Council staff to concentrate on core areas.

19.4 Partnering Agreements should not be considered where there are:

- (a) short term requirements where there will not be time for the provider to recover initial investment costs;
- (b) projects where the Council requires complete or significant control over the specification and service delivery, with little or no flexibility for the provider to propose new ways of doing things;
- (c) contracts where there is little or no scope for continuous improvement;
- (d) contracts where the Council requires an outcome, but cannot transfer key elements of control or major risks to the provider.

20. **Sharing or Delegation of Services**

- 20.1 Where there is an opportunity to deliver services via a shared working or delegation of service arrangement with another public sector organisation, the requirement to seek quotations/tenders in accordance with these Rules may not apply.
- 20.2 Any such opportunity shall (where applicable) initially be considered in accordance with the matters set out in paragraph 2.
- 20.3 The advice of the Corporate Manager (Legal Services) shall be obtained on any proposal to ensure that its implementation will be in accordance with appropriate legislative powers. Advice should also be sought from the Executive Head of Finance concerning the financial implications of any proposal.
- 20.4 All proposals for the sharing or delegation of services shall be subject to Cabinet approval (as appropriate)

21. **Gifts and Hospitality**

- 21.1 No gifts or hospitality should be accepted from any bidders to any contract being let by the Council. Acceptance of gifts or hospitality may be a disciplinary offence. Every Contracting Officer managing a procurement, letting a contract or managing a contract for the Council **must** inform the Corporate Manager (Legal Services) of any offers of gifts or hospitality. Reference should be made to the Council's policy on Gifts and Hospitality in place at such time and the Council's Bribery Act Policy.

22. **Exemptions from the Rules**

- 22.1 Exemptions from these Rules **must** be obtained **in advance** in accordance with the following procedure.
- 22.2 An exemption cannot be given for any procurement subject to the EU Procurement Directives as implemented in the UK by the Public Contracts Regulations 2015.
- 22.3 An exemption may be agreed jointly by the Corporate Manager (Legal Services) and the Executive Head of Finance if after considering a written request complying with 22.7 below they are both satisfied that the exemption is justified because:
- (a) the nature of the market for the works to be carried out, or the supplies, or services to be provided, has been investigated and is demonstrated to be such that a departure from the requirements of the Rules is justifiable; or
 - (b) that time limits required for tendering cannot be met for reasons of extreme urgency (usually emergency contracts where a risk to life, or the security or structural viability of a property can be demonstrated)

and requirements were unforeseen instead of there is an urgent requirement to secure the provision of works, services or supplies and it is not practical to seek competitive quotations or tenders;

- (c) by applying these Rules, it would not be possible to obtain genuine competition;
- (d) It has been tested that the works, services or supplies required are of a specialist nature, such that competitive prices cannot be obtained;
- (e) professional services, such as Counsel, are required urgently;
- (f) by extending the term (by exercising an option within the contract), or varying and/or extending the scope an existing contract, it is in the best interests of the Council, demonstrating value for money and is permitted by procurement legislation;
- (g) by appointing a contractor to carry out further work in connection with a main project following provision by such contractor of feasibility or initial work, it would be advantageous to the successful delivery of the main project; or
- (h) by applying these Rules it would not be possible to satisfy the best interests of the Council in terms of delivering social, economic or well-being benefits.

(similar to (g) but) that goods are required as a partial replacement for or addition to existing goods or installations and having another supplier would result in technical difficulties in operation and maintenance.

- 22.4 A record of the decision approving an exemption and the reasons for it **must** be kept by the Corporate Manager (Legal Services) and an entry made in the register of approved exemptions.
- 22.5 An exemption shall never be given in relation to either Rule 17 [conflicts of interest] or Rule 21 [gifts and hospitality] or retrospectively (unless it can be demonstrated to be essential for reasons of business continuity or recovery).
- 22.6 These Rules may also be varied or departed from when, but only when, jointly the Corporate Manager (Legal Services) and Executive Head of Finance advises that statute or subordinate legislation requires.
- 22.7 A request for an exemption from these rules must be made in writing to the Procurement Service in the first instance, who will then seek approval from the Corporate Manager (Legal Services) and Executive Head of Finance. The request must be accompanied by full reasons as to why the exemption is required, together with evidence and supporting information to demonstrate that the issue of the exemption will not prevent best value being obtained.
- 22.8 Any decision to exempt a procurement from compliance with these Rules must be made in writing jointly by the Corporate Manager (Legal Services) and Executive Head of Finance and no action shall be taken to enter into the contract until such time as a request has been submitted and properly approved.

- 22.9 If any approval to exempt a procurement from compliance with these Rules falls within the key decision criteria then that procedure must be also be followed.
- 22.10 The Council is subject to legal requirements to ensure fair competition for contracts of a value exceeding EU Threshold and subject to obligations under EU treaty to ensure that all contracts are awarded having regard to the need to avoid any action that is discriminatory, improper or which distorts competition. It is therefore expected that exemptions granted from the Rules will be limited.