

## **CONTRACT PROCEDURE RULES – UPDATED April 2020**

### **1. PURPOSE AND SCOPE OF CONTRACT PROCEDURE RULES**

The purpose of these Contract Procedure Rules is to ensure that any external procurement process for services, work or goods achieves best value and is transparent, open and fair making it possible for all decisions to be audited satisfactorily. They must be followed every time the Council wishes to enter into an external contract for services, work or goods.

### **2. PRINCIPLES OF GOOD PROCUREMENT**

The principles of good procurement are:-

- 2.1 Achieving value for money and compliance with these Procedure Rules, the Public Contracts Regulations 2015 and European Public Procurement Legislation
- 2.2 Balancing the needs of the Council and the potential contractor. The procurement process should give the Council sufficient information to form a sound view of a potential contractor's competence but without placing unreasonable burdens on them.
- 2.3 Potential contractors should understand from the outset what categories of information and general standards and responsibilities will be expected of them. They should be provided with adequate, accurate and timely information at all relevant stages of the procurement process.
- 2.4 All decisions should be based on objective measures that are justifiable in terms of the matters specified under the contract.
- 2.5 All potential contractors, should be subject to the same requirements and be treated equally throughout the procurement process.
- 2.6 All potential contractors should be made fully aware of the basis for evaluation of tenders.
- 2.7 The Procurement Handbook gives further details on the processes behind delivering the principles.

### **3. PROCUREMENT AND BEST VALUE**

The Council recognises the duty to achieve best value in the provision of all of its services. This duty requires every procurement process, over the value of £50,000 to include consideration of:-

- 3.1 The possibility of building in a requirement for continuous improvement in contracts.

- 3.2 Ensuring sufficient information is obtained in respect of the following matters:-
- 3.2.1 all relevant experience and track record over the past three years (five years for works contracts) in providing similar services, and at least two referees that can be called upon to vouch for performance;
  - 3.2.2 background information on the organisation, financial accounts for last two years, average annual staffing for the previous three years and details of staff involved in the provision of the service in question, including their qualifications and training, TUPE track record where relevant;
  - 3.2.3 details of quality accreditation, documentation and procedures, including health and safety management, staff management and employment practices, environmental policy, as relevant to the performance of the contract;
  - 3.2.4 details of convictions for criminal offences or of any acts of grave misconduct relating to the potential contractor's business or profession including details of cases over the last three years where the potential provider has been found by a Court or Tribunal to have breached the requirements of employment protection, including legislation under the Equality Act 2010 (including matters on sex, race, disability) and health and safety matters. Details of any appropriate remedial actions taken should also be included.

The list is not exhaustive and where relevant to the performance of the contract further detailed questions can be asked.

#### 4. HEALTH AND SAFETY

The Council must be satisfied in any procurement process that potential providers have satisfactory systems for managing health and safety in relation to the matters concerned. Details of their health and safety policy relevant to the performance of the contract must be obtained to ensure it provides satisfactory systems for managing health and safety. Monitoring arrangements must be in place post contract award to ensure that health and safety matters are being properly addressed.

Where the Council employs a Contractor, irrespective of the value of the appointment, who has a physical presence on a Council owned or managed site, then a health and safety assessment must be undertaken by the Council's Risk and Resilience team before the work commences. The Risk and Resilience team may request extra information from the Contractor before they are permitted to work on site. This assessment only needs to take place on one occasion for each Contractor, as long as the scope of their contract does not change.

#### 5. EQUALITY, DIVERSITY AND SAFEGUARDING

- 5.1 The Council is committed to equality of opportunity, both as an employer and service provider. The Council recognises that the Council's equality values, principles and standards underpin everything the Council represents and aims

to achieve. The Council wants to ensure its services are as accessible as possible and are designed in a way that best meets the needs of the community.

The Council has four Equality and Diversity objectives, which apply to all services - including services provided by contractors:

**To be a fair and accessible employer.** We will take steps to ensure our workforce is reflective of the diverse community that we serve and that the workforce policy informs them of what they can expect working for the Council, what is expected of them and what to do if they feel they are not being treated with dignity.

**To demonstrate the importance of equality and diversity issues when we procure and manage services.** We will ensure that the services we commission meet the expectations we set in terms of Equalities and Safeguarding standards.

**To actively engage in partnership with our communities.** We will actively engage with a diverse range of communities in order to ensure that our services are meeting their needs and requirements and that we work effectively in partnership with them.

**To deliver excellent customer service to everyone we serve.** We will strive to deliver excellent customer services to improve customers' experience of dealing with the Council.

In order to satisfy these commitments, those submitting an application for a tender are required, to respond and provide evidence in respect of the following matters:

- Their experience of delivering services in a multi-cultural community.
- Their strategies for ensuring equality of access to services.
- Examples of and outcomes arising from consultation undertaken with service users and/or proposals for how such consultation might be undertaken.
- Evidence that information and services they provide are accessible to those for whom they are relevant irrespective of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation.
- How they would work towards building a workforce that reflects the diversity of the community in Welwyn Hatfield.
- How they would comply with the Council's commitment to equality and the objectives set out above.

5.2 The Council's standard contract terms and conditions include obligations relating to equality and diversity.

## **SAFEGUARDING**

- 5.3 The Council is committed to safeguarding children and vulnerable adults both as an employer and service provider. The Council has both a moral and a legal obligation to ensure the highest possible standard of care for those vulnerable people who use and have access to our services as well as those we commission and contract out.
- 5.4 The Council is committed to providing safe activities and opportunities. The Council understands it has a duty to safeguard those individuals placed in our care and to facilitate the best possible professional practice from the Council, its employees, elected members, volunteers and those individuals, companies or organisations that provide goods or services, or undertake work for and on behalf of the Council.
- 5.5 The Council's safeguarding policy details the Council's approach and commitment to safeguarding vulnerable people. It includes the Council's requirement to work with partner organisations in a collective commitment to safeguarding and that the same commitment will also be required of those providing a service on behalf of the Council.
- 5.6 In order to satisfy these commitments, those submitting an application for a relevant tender are required to respond and provide evidence in respect of the following matters:
- The organisation has a clear and suitable statement and/or policy with regards to safeguarding children and vulnerable adults
  - Their experience (where relevant) of delivering services to vulnerable individuals or groups.
  - That there is a clear line of responsibility across the organisation with regards to safeguarding and safeguarding referrals
  - That the organisation has a training programme for all employees that includes where relevant safeguarding.
  - Evidence that where required safer recruitment policies and processes are in place.
  - Evidence that the services they provide safeguard both their employees and the public they serve
- 5.7 The Council's standard contract terms and conditions include obligations relating to safeguarding children and vulnerable adults.

## **6. PUBLIC SERVICES (SOCIAL VALUE) ACT 2012**

- 6.1 The Social Value Act encourages the Council to talk to their local provider market or community to design better services, often finding new and innovative solutions to difficult problems. Before the start of the procurement process, the relevant officer should think about whether the services they are going to buy,

or the way they are going to buy them, could secure these benefits for their area or stakeholders.

- 6.2 For over (EU) threshold contracts the inclusion of Social Value criteria is essential in any procurement. For below threshold contracts, the inclusion of Social Value criteria should be proportionate to the value and relevance of the contract

7. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 ("TUPE") (as amended)

- 7.1 TUPE should be presumed to apply in any procurement process involving the contracting out of a service area with a discrete budget and staff assigned to it. The exception to this is if there are genuine exceptional reasons for TUPE not to apply. These could be any of the following:-

7.1.1 where a contract is for the provision of both goods and services, but the provision of services is ancillary in purpose to the provision of the goods; or

7.1.2 where the matter being contracted is essentially new or a one off project; or

7.1.3 where services or goods are essentially a commodity bought "off the shelf" and no grouping of staff are specifically and permanently assigned to a common task; or where the features of the service or function subject to the contracting exercise are significantly different from the features of the function previously performed within the Council, or by an existing contractor e.g. a function to be delivered electronically and in such a way that it requires radically different skills, experience and equipment.

7.2 Invitations to tender should state that staff are to transfer pursuant to TUPE and sufficient information should be provided to enable potential providers to cost the effect of TUPE applying and staff transferring to them. The Human Resources service area will deal with the provision of the appropriate information. Pensions provided to transferred staff must be certified by the Government Actuary as "broadly comparable" with the Local Government Superannuation Scheme. There should also be an agreement with the new employer's pension scheme providing that staff will be able to transfer their accrued service credits into that scheme on a day-for-day, or equivalent, basis. Alternatively, transferred staff may continue to have access to the Local Government Superannuation Scheme provided that the Contractor agrees to this and enters into an Admission Agreement and Admission Bond with Hertfordshire County Council - the 'Adminstrating Authority' for the Pension Fund - and with Welwyn Hatfield Borough Council. Advice on the applicability of TUPE and the clauses to be inserted in invitations to tender and contracts should be sought in the first instance from the Procurement Manager.

7.3 TUPE should also be presumed to apply to a procurement process when an external contract is to be re-let where there are staff involved. Invitations to tender should state that staff are to transfer pursuant to TUPE and information relating to pay, bonus payments, allowances, holiday entitlement and pension

details should be obtained from the incumbent Contractor before the Invitation to Tender is issued and the information must form part of the Invitation to Tender to enable potential providers to cost the effect of staff transferring to them.

## 8. ELECTRONIC PROCUREMENT

- 8.1 All procurements, with a value greater than £10,000 must be undertaken using the E Procurement system. To ensure a fully auditable process, all correspondence during the tender process must be transmitted through this system.
- 8.2 It should be made clear in any invitation to quote/tender documents that any tender must be submitted through this system and that any tenders received in hard copy or by any other means (such as e-mail) will be rejected.

## 9. EXPENDITURE AND AUTHORISATION THRESHOLDS

- 9.1 All purchases are subject to the following procedure:-

<b>Estimated Value</b>	<b>Minimum No. of Quotations/ Tenders</b>	<b>Council Seal</b>	<i>Notes</i>	<i>Authorisation to award contract</i>
Under £10,000	(Obtain a minimum of one written quotation)	No	Although a formal procurement process does not need to be followed, value for money still needs to be demonstrated e.g. informal price comparison/obtain written quotation.	Service Manager
£10,000 - £49,999	3 quotations	No	Unless a recognised trade or profession contract is to be used (i.e. JCT) then the Council's standard terms and conditions must be used. Legal Services must approve any deviation from these terms and conditions. Consideration should also be given to the use of Liquidated Damages (a predetermined and realistic estimate of potential loss arising from default under a contract). If Liquidated Damages are not considered appropriate then	Head of Service

<b>Estimated Value</b>	<b>Minimum No. of Quotations/ Tenders</b>	<b>Council Seal</b>	<i>Notes</i>	<i>Authorisation to award contract</i>
			the reason should be given on the contract file. The Procurement Manager should be advised at the start of the procurement process.	
£50,000 - £ 99,999	Advertised on an Open basis	No	The Procurement Manager must manage the process. In addition to the above a financial appraisal of all tenderers should be undertaken as part of the procurement process. Consideration should also be given to whether a performance bond is appropriate and if the EU Procurement Directives apply.	Corporate Director
£100,000 and over	5 tenders	Yes	The Procurement Manager must manage the procurement process. Officers must obtain a performance bond for all construction contracts with a value of £500,000. For all contracts with a value above £100,000 a risk assessment should take place to ascertain if a Performance Bond and/or a Parent Company Guarantee is required. Section 9.6 provides details of the risk assessment to be undertaken.	Cabinet

9.1.1 Those Officers wishing to enter into contracts must use their best endeavours to achieve the minimum number of quotations/tenders referred to in the above table. If having done so it is not possible to achieve the minimum number of quotations/tenders a clear note must be placed on the contract file giving the reasons why the minimum number could not be achieved.

9.1.2 In situations where there is only one quotation or tender and one of the circumstances referred to in Procedure Rule 14 does not apply the agreement

of the Procurement Manager must be obtained before any contact is entered into in respect to all contracts with an estimated value exceeding £10,000.

## 9.2 How to calculate the estimated value:

When a new supplier is to be used, or a new service / commodity is purchased then the following should be considered.

9.2.1 For Capital projects (without maintenance) it should be the Capital Budget approved for the purchase.

9.2.2 For Capital projects that include a contractual requirement for maintenance, it should be the cost of the capital budget plus the maintenance costs for the duration of the maintenance agreement (i.e. a capital purchase of £45,000, that includes a maintenance contract for 5 years estimated at £5,000 per annum has a total estimated value of £70,000 and is therefore subject to 5 tenders

9.2.3 For revenue contracts the estimated value should be for either:

- (a) The estimated value of a one off purchase.
- (b) For recurring requirements with that supplier the estimated shall be either the value for the proposed contract length or if it is not known how long the arrangement will be in place then the estimated value should be **4** times the annual expected expenditure.

9.2.4 The estimated value must exclude Value Added Tax (VAT) but must include all other taxes and duties.

9.3 Where a Contractor is commissioned to undertake more than one order/contract for a specific department in any one financial year period, then the total amount spent with that supplier should not exceed £10,000 without conducting a competitive process in accordance with these Rules.

9.4 It is acknowledged that more than one department may utilise the same supplier, without knowledge of the expenditure of the other department. The procurement department will regularly assess the expenditure and should the expenditure on any one supplier exceed £10,000 (in a financial year), then those departments should conduct a joint procurement in accordance with these rules.

9.5 Investigatory phases- services are often commissioned where projects are at the investigatory (initial) stage as to project viability, pilots or design etc. Quite often extra resources are required to further re-procure as the project progresses. Consideration should be given at the investigatory (initial) stage to whether it would deliver better value to seek competitive quotes from the outset of the intended project, for each envisaged stage of the project. This may reduce the need for re-procuring as the project progresses and the risk of delaying the project timetable.



9.6 The following table explains the risk assessment to be undertaken

<b>Type and Value of Contract</b>	<b>Security required</b>
Contract Value below £100,000	None
Service Contract below £1,000,000 in value where there is little risk to the Council. Little risk would include the following criteria: 1) All payments are made after all work is completed and signed off by the Council. 2) The service could easily be performed by another contractor (or the Council) who could be engaged at short notice. 3) The cost of someone else performing the contract is not substantially more (this would be ascertained from previous bids received).	None
Service contract above £1,000,000 in value or where the criteria above is not met	Performance Bond at 10% of the value of the contract or parent company guarantee to be obtained.
Where the council receives an income from the Contractor (which is greater than the expenditure by the Council)	Performance Bond at 10% of the value of the contract or parent company guarantee must be obtained.
Where the contract is a construction contract greater than £500,000	Performance Bond of 10% of the value of the contract must be obtained.

#### 10. INVITATION TO TENDER LIST AND TENDER EVALUATION CRITERIA

Where the estimated value of the contract is over £10,000 a tender list must be compiled by one of the following methods and the Tender Evaluation Criteria must be agreed at the level set out in the table below.

<b>Value of Contract</b>	<b>Method of Selecting List</b>	<b>Authority to agree Tender Evaluation Criteria</b>
£10,000 - £49,999	The officer should consult trade journals and directories of organisations that give details of companies that trade in the field of work. Officers should use reasonable endeavours to obtain at least one quotation from an organisation based in the Borough of Welwyn Hatfield. This organisation must compete on an equal basis with other bidders. The officer may decide to advertise the contract. If this is the case, and the value is greater than £25,000, then the	Head of Service

	opportunity must also be advertised on the Contracts Finder website.	
£50,000 - £190,000 (for supplies or services contracts or up to £4,800,000 for works contracts)	An advertisement should be placed on the Supply Hertfordshire Portal and the Contracts Finder website inviting applicants to submit a bid	Corporate Director or Member Procurement Board if established in accordance with section 26
£190,000 and above (for Services and Supplies) contracts, £664,000 (Light Touch Regime for Services) or £4,800,000 and above for Works contracts	An advertisement should be placed in Official Journal of the European Union	Corporate Director or Member Procurement Board if established in accordance with section 26

## 11. PREQUALIFICATION QUESTIONNAIRES

- 11.1 Prequalification questionnaires should only be used where the procurement is above the EU Procurement threshold and with the prior agreement of the Procurement Manager. Generally all procurements should be let on an Open basis (i.e a single stage tender in which any contractor who wishes to bid may do so).

## 12. TENDER EVALUATION CRITERIA

- 12.1 For all contracts with a value of between £10,000 and £50,000, the contracts must be awarded on the basis of one of the two options that must be determined by the relevant Head of Service
- (a) The cheapest acceptable tender (the tender that meets all delivery and specification requirements) or
  - (b) A pre-set and disclosed price/quality criteria.
- 12.2 For all contracts with a value of £50,000 or over, tenders must be evaluated on a mixture of price and quality. The percentage split between price and quality (the evaluation criteria) should be determined by the relevant Officer or Procurement Board, as set out in the table at section 10.
- 12.3 The tender evaluation criteria must clearly be laid out in all tender documents

### 13. SPECIFICATION

- 13.1 All invitations to quote or tender for works must be based on a definitive specification. The purpose of a service specification is to define the Council's objectives for the service to be provided and the requirements of potential contractors. As far as possible requirements should be specified in terms of output and performance rather than how the potential contractor is to go about providing the service (input based).
- 13.2 Technical specifications should refer to national standards or schemes and relevant European Union standards or equivalent where available.

### 14. ALTERNATIVE PROCEDURES IN PRESCRIBED CIRCUMSTANCES

The market place does not always allow the procedures which are set out in the table above to be followed. Contracts can also be entered into by an appropriate officer in the following circumstances (subject to compliance at all times with European procurement rules):

- (a) For the supply of goods or services where there is only one supplier and no acceptable alternative, following consultation with the Procurement Manager.
- (b) Instruction of legal counsel/barristers - Where it is in the best interests of the Council to directly instruct a particular legal counsel/barrister because they are one of only a few suppliers who have expertise or specialist knowledge or substantial experience or skills in a relevant area.
- (c) For any extension, addition to or maintenance to existing buildings, works plant or equipment contracts, the matter will be referred to Cabinet for a decision to waive these rules. Cabinet will consider if this can only be done satisfactorily by the original contractor or supplier
- (d) As part of a consortium (where the Council is not the lead authority).
- (e) A contract that has been tendered by a central government body (i.e. the Crown Commercial Services).
- (f) Where there is an urgent Health and Safety requirement, subject to the prior approval of the Council's Risk and Resilience Manager.
- (g) By the Chief Executive certifying that there is extreme urgency, after consulting the Leader of the Council and relevant Cabinet portfolio holder. The reasons for extreme urgency must be recorded in writing and placed on the contract file
- (h) Where the Cabinet considers it desirable on commercial grounds to accept a quotation from a contractor already engaged by the Council on a project provided that further services have a connection with the original project and that the price is no more than 50% of the original contract sum.
- (i) For loans arrangements.

- (j) On behalf of another authority where the agency agreement provides that the procurement rules of that authority are to be followed.
- (k) Where the Cabinet agrees a report from a Corporate Director detailing a case where it is to the advantage of the Council that these rules should be waived.

## RECEIPT AND OPENING OF TENDERS

- 15.1 The Council is committed to using the e-tendering system for any project valued greater than £10,000.00
- 15.2 The E-Procurement system is time-locked and cannot be accessed by the Council until after the tender return deadline. After the deadline the tender-box must be opened electronically by the following person(s):
  - 15.2.2 Under - £50,000 – an officer from the service area who is not undertaking the quality evaluation of the tender
  - 15.2.3 Over £50,000 – The Procurement Manager

## 15. TENDER CLARIFICATION (AND EVALUATION)

- 15.1 After tenders have been opened clarification may be necessary to check apparent omissions, arithmetical errors, completeness of documentation etc. In seeking clarification all communications with tenderers should be properly recorded and must be issued through the E-Procurement System. The objective at this stage is to evaluate the tenders as submitted and it follows therefore that under no circumstances should any tenderer be given the opportunity to engage in negotiations with regard to pricing or any other aspects of the tender. Clarification should be obtained solely to the extent necessary for a clear evaluation.
- 15.2 To ensure impartiality and in accordance with good procurement practice, the price and quality aspects of any bid must be undertaken independently of each other. Any officer (or consultant working on behalf of the Council), must not have knowledge of any pricing information when undertaking the quality evaluation)

## 16. THE LETTING OF CONTRACTS

- 16.1 For procurements less than £50,000 in value, then it is acceptable to issue a purchase order. The purchase order must include:
  - (1) The name of the supplier
  - (2) The specification
  - (3) The date the order needs to be completed by
  - (4) The total value of the order with any payment terms
  - (5) The purchase order number for the contract
  - (6) A link to the Councils standard terms and conditions

16.2 Any procurement over £50,000 must be completed by a formal contract document (which is usually drafted by procurement and completed by the legal department) and must contain:-

- a description of the services, works or goods to be supplied;
- the price and any discounts;
- commencement and completion dates including the provision of liquidated damages in the case of late completion in the circumstances referred to in Procedure Rule 8;
- delivery date, if appropriate;
- the terms of payment;
- appropriate insurance generally including £10 million cover in respect of public liability, £500,000 cover for professional indemnity liability (where relevant) and employers liability insurance, if applicable, in accordance with the legal requirement. The relevant officer may decide to undertake a risk assessment of the project which may result in the level of insurance increasing or declining in accordance with the risks identified

16.3.1 In addition the following controls should be present:-

- the contract between the Contractor and the Council must be in writing;
- the contract must be signed by authorised signatory(ies) of the Contractor and the Council and be executed as a deed under seal if its value is £100,000 or over.
- A contract which may be executed by signing only, in accordance with these Contract Procedure Rules, may be signed with wet and/or electronic signature(s) on behalf of the parties to the contract and, on behalf of the Council may be signed by the relevant Head of Service who shall notify the Legal Services Manager of the signing of the Contract and the Legal Services Manager shall ensure that details of the Contract are entered into the Signing Register.
- In circumstances where a contract is being signed electronically by/on behalf of a Contractor, the Contractor shall, at the same time as providing the Council with the electronically signed contract, provide the Council with a separate statement (signed by the person(s) who has/have signed the contract) certifying that:
  - the person(s) signing the contract has/ve authority to do so;
  - the person(s) signing the contract intend/s to authenticate the contract;and

- any and all formalities and legal requirements relating to execution of the contract are satisfied.

16.3.2 Where a contract or other legal document is required to be executed as a deed the Contractor/other party(ies) may execute the contract electronically provided that the Contractor/other party(ies) shall each do so by signature of two (2) authorised signatories and shall provide to the Council, at the same time as providing the electronically executed deed to the Council, a separate statement certifying that:

- the person(s) executing the contract on behalf of the Contractor/other party(ies) has/ve authority to do so;
- the person(s) executing the contract on behalf of the Contractor/other party(ies) intend/s to authenticate the contract; and
- any and all formalities and legal requirements relating to execution of the contract are satisfied.

16.3.3 The Head of Law and Administration is authorised to take any decision(s), in relation to execution of contracts and other legal documentation, as is necessary to secure the uninterrupted continuation of the day-to-day business of the Council during the Covid-19 epidemic up to and including 7 May 2021.

## 17. NOTIFICATIONS TO POTENTIAL CONTRACTORS

17.1 The successful Contractor should be notified promptly in writing, through the E-Procurement Portal that they have been selected to carry out the contract. It should be confirmed with the Contractor that they are available to commence the contract and that they will undertake the work to the terms and conditions of their tender.

17.2 Unsuccessful contractors should be informed, in writing that they have not been selected to carry out the contract at the same time as the successful Contractor.

17.3 In the event that the selected Contractor does not confirm that they are still available to carry out the work to the terms and conditions of the tender then the contract can be offered to the second best tenderer unless the Procurement is subject to the European Procurement Directives when the project must be re-advertised

17.4 Potential contractors should also be notified of any of the following decisions taken in respect of them:-

- not to invite to tender when a request has been made;
- not to accept the submission of a tender;
- not to approve, select or nominate sub-contractors;

17.5 In the event of a potential contractor making a written request for information regarding any contract decision, the appropriate officer must provide a written response detailing the reasons for such decision within 15 days of the receipt of the potential contractor's request (or within 3 days if the procurement is subject to EU procurement procedures).

## 18 VARIATION TO CONTRACTS

18.1 The authority to accept a variation to contract is dependent upon the value of the change (calculated as the estimated value of the change for the remainder of the contract term):

- Up to £49,999 – Head of Service
- Between £50,000 and £99,999 – Corporate Director
- £100,000 and over – Cabinet

18.2 The terms of the variation must be in writing and stored with the original contract.

## 19 EXTENSION OF CONTRACTS

19.1 An extension to a contract can only be made if there is provision within the existing contract. The decision to extend the contract is dependent upon the value of the extension and shall be agreed at the following level:

- Up to £49,999 – Head of Service
- Between £50,000 and £99,999 – Corporate Director
- £100,000 and over – Cabinet

19.2 The terms of the extension must be in writing and stored with the original contract.

## 20 ASSIGNMENT AND NOVATION OF CONTRACT

20.1 Assignment or Novation of a contract can only be made if there is provision in the contract to allow this to happen. Any Assignment or Novation must be agreed by the relevant Corporate Director and checks should be made as to the status of the new contractual party to ensure it meets all the original selection criteria and is able to perform the contract. The assignment or novation shall not affect the performance of the contract in any way to the detriment of the Council.

20.2 The terms of the assignment or novation must be in writing and stored with the original contract.

## 21 CURRENCY

21.1 All contracts entered into should fix the price in Sterling. Any changes in the value of money which have a material impact on the value of a contract must be reported to the Corporate Director (Resources, Environment and Cultural

Services) for report and consideration by the Cabinet. Any proposals to contract in a currency other than Sterling on the basis that it represents value for money must be agreed by the Corporate Director (Resources, Environment and Cultural Services).

## 22 NOMINATED SUB-CONTRACTORS AND SUPPLIERS

- 22.1 Where a sub-contractor or supplier is to be nominated to a main contractor the appropriate officer must invite quotations or tenders in accordance with these Procedural Rules (for the appointment of this subcontractor) and authorise the letting of the sub-contract between the sub-contractor or supplier and main Contractor.
- 22.2 The sub-contractor or supplier must send with their quote or tender an undertaking to work for the main contractor and to indemnify the main contractor for the sub-contracted works or materials and provide a collateral warranty in the Council's favour.

## 23 OUTSIDE CONSULTANTS AND TECHNICAL OFFICERS

- 23.1 Outside consultants and technical officers employed to supervise or to be otherwise involved with the operation of contracts must follow any provision of these Procedural Rules which are relevant to their appointed duties. Their contract for services must stipulate this requirement.

## 24 BRIBERY AND FRAUD

- 24.1 The Corporate Director (Resources, Environment and Cultural Services) shall keep a Fraud Risks Register upon which is identified potential contractors who are considered by the Council to be at high risk from benefit fraud, abuse or misuse in connection with the potential contractor's business and/or its employees, sub-contractors or agents.
- 24.2 The current statutory provisions on bribery and fraud are contained in the Bribery Act 2010 ( the Act) . The four key principle points to note in relation to offences under the Act are:
- The Act extends the crime of bribery to cover all private and public sector transactions (previously bribery offences were confined to transactions involving public officials and agents). These offences cover all legal persons (which includes companies and individuals).
  - The Act creates a new offence of failing to prevent bribery which applies to commercial organisations. A commercial organisation is stated as being a company, corporate body or partnership but not a sole trader. Section 7 provides that a relevant commercial organisation, ('C'), commits an offence if a person, ('A'), associated with it, bribes another person intending either to obtain or retain business for C or an advantage in the conduct of business for C. An offence is committed if the conduct complained of would constitute the commission by A of an offence



contrary to two other sections of the Act (which cover the general offence of bribery and the more specific offence of bribing a foreign public official). The Act defines A as a person who performs services for or on behalf of C. A may therefore be a service provider, subsidiary, contractor, agent or employee and they may be based in or outside of England and Wales. An organisation will only have a defence to this offence if it can show it had 'adequate procedures' in place to prevent bribery.

- The scope of the Act is extensive – the offences are very broadly defined and it has significant extra-territorial reach.
- The offences contained in the Act carry criminal penalties for individuals and organisations. For individuals, a maximum prison sentence of ten years and/or an unlimited fine can be imposed; for companies, an unlimited fine can be imposed.

The Council, its employees and contractors/bidders are covered by the Act.

24.3 All contracts over £50,000 in value must contain a relevant Anti-Bribery Clause.

24.4 Officers should be alert to indicators of potential bribery in procurement which may include:

- Unjustified and unexplained favourable treatment of a particular supplier from a particular contracting employee over a period of time, including number or amount of contracts awarded to a given firm or supplier
- Unjustified high prices and important price increases
- Low quality and late delivery acceptance by procurement official
- Unusually high volume of purchases to a single source
- Unusually high volume of purchases approved by a single purchaser
- Unnecessary or inappropriate purchases
- Recurrent and systematic rejection of firms who ultimately act as subcontractors
- official accepting inappropriate gifts or entertainment
- Close relationship (including social) between the official and the vendor
- Unexplained sudden increase in wealth of the procurement official
- Supplier has a reputation of paying bribes
- Commercial contracts different from the suppliers core business
- Intermediary charges high commission, claims special influence on buyer
- Unnecessary middleman involved in contacts or purchases
- High risk sectors or countries
- official has undisclosed outside business
- Procurement official declining promotions to other non-procurement position
- Procurement official acting beyond or below normal scope of duties in awarding or administering contracts
- Long and unexplained delays between announcement of the winning bidder and the signing of the contact (this may be an indication of the negotiation of the bribe)

- Frequent open or restrictive calls for tender that are inconclusive, ending in negotiated procedures

## 25. ROLES OF MEMBERS IN PROCUREMENT

- 25.1 It is recognised that Members of the Council should be fully involved in the Procurement process for major projects.
- 25.2 Before the commencement of any procurement with a value of £100,000 or more the relevant officer should consult with the Portfolio Holder to ascertain if a Member Procurement Board should be established. An officer may also elect to take this route for contracts less than £100,000 if there is a specific need for Members to be involved (e.g. a high profile public facing procurement)
- 25.3 The Portfolio Holder shall determine if a Member Procurement Board is established. If so, a recommendation should be made to the next Cabinet meeting recommending the establishment of the Member Procurement Board and requesting that Board Members be nominated by Cabinet.
- 25.4 A terms of reference of the Member Procurement Board will be established, but is likely to include:
- (a) Agreement of evaluation criteria for the application stage
  - (b) Agreement of the tender list
  - (c) Agreement of the evaluation criteria for tender stage
  - (d) Attending presentations by bidders
  - (e) Undertaking site visits (if appropriate)
  - (f) Recommendation of award of contract to Cabinet.
- 25.5 In no circumstances shall the Member Procurement Board have the authority to award or enter into any contract.