

## SECTION 17 – CONTRACT PROCEDURE RULES

### Glossary of terms:-

- 17.1.1 "Tender" means a sealed bid or proposal to supply or receive goods, materials or services or for the execution of works.
- 17.1.2 "Contract" means any contract including a Purchase Order or otherwise for the supply or disposal of goods, materials or services or for the execution of works but shall exclude contracts of employment or for the sale and purchase of any interest in land.
- 17.1.3 "Quotation" means a written offer made by a supplier / contractor in response to a request received from the Council in respect of the supply and / or disposal of goods, materials or services or for the execution of works where the values are below those in Rule 17.46.
- 17.1.4 "Purchase Order" means any order placed on the Council's approved form(s) and signed by an appropriately authorised officer of the Council, which includes the use of approved electronic forms, for supply or disposal of goods, materials or services or for the execution of works.
- 17.1.5 "Commissioning strategy / plan" means the written strategies or plans produced by a Head of Service that detail the medium/long term future plans for the design or commissioning of particular services. The plans should be for a minimum of 3 years
- 17.1.6 "Consideration" means the total value of (whether monetary or otherwise) payable by or to the Council under the Contract or any series or combination of contracts of which it forms a part, the value of which will be aggregated for the purposes of the thresholds specified in Rules 17.45 to 17.47 .
- 17.1.7 "Most Economically Advantageous Tender" means that tender or quotation which when taking into account a number of criteria including but not limited to price, quality, delivery, technical merit and compatibility, functionality, support and overall cost effectiveness, affords the Council the most economically advantageous solution.
- 17.1.8 "Clarification" – Once tenders and / or quotations have been received, there may need to be further contact with potential contractors before they can be fully evaluated. Clarification is either an exchange of documents or a minuted meeting with potential contractors to clarify aspects of a tender and / or quote and correct apparent errors.
- 17.1.9 "Framework Agreement" means an arrangement with one or more suppliers for the provision of goods, materials, works or services and which is in place for a set period of time but with no guarantees of volume of individual orders or of the consideration payable over the period. The commodity / service is acquired as and when it is needed during the Framework/contract period.
- 17.1.10 "The Exemptions Register" means the register maintained by Commercial Services containing decisions taken by the Council's Section 151 officer regarding requests for exemptions from tendering in accordance with Rules 17.60 to 17.64
- 17.1.11 "The Contracts Register" means the register maintained by Commercial Services in accordance with Rule 17.84 recording each and every contract entered into by the Council.
- 17.1.12 "Contractor" means a third party with whom the Council has entered into a contract for the supply or disposal of goods, services or works.
- 17.1.13 "Procurement Plan" means a plan or methodology to ensure larger or more complex procurements are carried out in a manner likely to deliver a best value solution and shall include but not be limited to the following elements:

## SECTION 17 – CONTRACT PROCEDURE RULES

- 17.1.13.1 confirmation of budgetary provision
- 17.1.13.2 confirmation that a suitable corporate contract for similar goods, materials, services or works is not already in existence
- 17.1.13.3 a business case (where applicable) for the procurement in terms of its contribution to the work of the relevant department and towards achievement of the Council's corporate objectives
- 17.1.13.4 the procurement methodology (including the applicability of EU and UK law)
- 17.1.13.5 the identification of a lead officer responsible from the service
- 17.1.13.6 the identification of a lead commercial services officer
- 17.1.13.7 the identification of project implementation issues identified (if appropriate)
- 17.1.13.8 identification of evaluators
- 17.1.13.9 identification of contract manager
- 17.1.13.10 arrangements for transition planning / business continuity / mobilisation plans
- 17.1.13.11 an equality impact assessment where appropriate

### Overriding principles

- 17.2 These Contract Procedure Rules are not intended to conflict with European Union & UK law. Wider legal requirements shall always take precedence over these rules.
- 17.3 These rules govern organisational behaviour in the conduct of procurement and commercial activity. It is given that such behaviour is undertaken in the support and delivery of the wider policies and objectives of the Council.
- 17.4 Nothing in these rules shall preclude the Council from its duty in spending public money wisely. Officers shall always seek value for money.
- 17.5 The nature and extent of procurement activity must be appropriate to the nature and value of the goods and services being procured.
- 17.6 Procurement management will be optimised to make the most of Council resources; conducted in accordance with the Council's strategic plans.
- 17.7 Utmost probity will be demonstrated at all times.
- 17.8 Strategic Directors / Director / Heads of Service must ensure that the Commercial Services Team are consulted and / or lead on high risk / high value / or sensitive procurements.
- 17.9 For contracts of a strategically important or politically sensitive nature, Strategic Directors / Director / Heads of Service should:
  - 17.9.1 seek a decision from the Cabinet as to whether such tenders are to be invited under the Strategic Directors' / Director's / Heads of Service's recommended strategy; and
  - 17.9.2 ensure that Members are not involved in the tender evaluation process but where appropriate Members can be involved in the service design or commissioning stage prior to the start of a tender process.

## SECTION 17 – CONTRACT PROCEDURE RULES

### General principles

#### Extent of Contract Procedure Rules

- 17.10 The objective of these procedures is to ensure that the Council enters into contracts for the supply and / or disposal of goods, materials and services or for the execution of works on the most economically advantageous terms through the application of ethical, consistent and transparent practices and procedures which also comply with the best value requirements and with the Council's Commissioning and Procurement Strategy
- 17.11 Strategic Directors / Director / Heads of Service have delegated powers to enter into contracts on behalf of the Council, subject to these procedure rules provided that prior to so doing the Strategic Director / Director / Head of Service is satisfied that the necessary budgetary provision is in place and that the Council's Financial Procedure Rules as set out in Section 16 will be followed.
- 17.12 Where goods, materials, services or works can be provided by an internal provider or trading unit then the internal provider or trading unit may be used without recourse to these procedure rules. Where there is no internal provision or where there are proper service reasons or circumstances to seek competition, then these procedure rules must be observed on every occasion that the Council procures a contract or if proposing to procure or dispose of goods, materials, services or works.
- 17.13 European Union and UK law must be followed where relevant and any contract or series of contracts which are likely to exceed the EU threshold limits from time to time and contracts (currently £172,514 for services and supplies and £4,322,012 in respect of works) must be reported to the Council's Professional Lead - Commercial Services prior to any action being taken.

#### Compliance

- 17.14 Every contract entered into by the Council pursuant to or in connection with the Council's functions shall comply with:
- 17.14.1 all relevant statutory provisions
  - 17.14.2 the relevant European procurement rules (i.e. The EC treaty, the general principles of EC law and the EC public procurement directives implemented by the United Kingdom regulations)
  - 17.14.3 the Council's constitution including:
    - 17.14.3.1 these contract procedure rules; and
    - 17.14.3.2 financial procedure rules; and
    - 17.14.3.3 schemes of delegation; and
    - 17.14.3.4 the Council's strategic objectives; and
    - 17.14.3.5 the Council's commissioning and procurement strategy and policies.
- 17.15 Failure by officers to comply with any of the provisions of these contract procedure rules or any associated guidance adopted by the Council from time to time may result in disciplinary action.

## SECTION 17 – CONTRACT PROCEDURE RULES

- 17.16 A number of purchasing arrangements are in operation within the Council. Correct use of these arrangements, as advised by the Professional Lead - Commercial Services, is sufficient to ensure officers meet their responsibilities for compliance. Such arrangements include:
- 17.16.1 framework Agreements available for use by the Council,
  - 17.16.2 procurement arrangements undertaken by, or in consultation with the Professional Lead - Commercial Services
  - 17.16.3 electronic systems and catalogues available for use by the Council.
- 17.17 Any procurement carried out on behalf of the Council may only be undertaken by officers authorised to do so by their Head of Service / Director / Strategic Director.
- 17.18 All decisions taken in relation to the commissioning and procurement processes should be documented.

### **Procurement by consultants**

- 17.19 Where the Council uses consultants to act on its behalf in relation to any procurement, then the Strategic Director / Director / Head of Service shall ensure that the consultants carry out any procurement in accordance with these contract procedure rules, including the reporting of any procurement to the Professional Lead – Commercial Services.
- 17.20 No consultant shall make any decision on whether to award a contract or to whom a contract be awarded. Such decisions must be made by the officer of the Council responsible for the procurement within the service. The Strategic Director / Director / Head of Service shall ensure that the consultant's performance in relation to procurement is in accordance with these contract procedure rules and European Union and UK law.
- 17.21 Where the Council uses consultants to act on its behalf in relation to any procurement the consultant must declare any potential conflict of interest that may arise to the Strategic Director / Director / Head of Service prior to the commencement of the procurement process.
- 17.22 Where the Strategic Director / Director / Head of Service considers that such a conflict of interest is significant the consultant shall not be allowed to participate in the procurement process.
- 17.23 When consultants or technical officers are employed to supervise contracts they must similarly follow Contract Procedure Rules and the Council's Financial Procedure Rules. Their contract for service must include this requirement.

### **Procurement of consultants**

- 17.24 For the avoidance of doubt, the appointment of consultants shall be made in accordance with the requirements of these Contract Procedure Rules and Rule 16.453 of the Financial Procedure Rules (reporting of costs).

### **Declaration of interest**

- 17.25 No Member, officer or agent of the Council shall improperly use their position to obtain any personal or private benefit from any contract entered into by the Council.

## SECTION 17 – CONTRACT PROCEDURE RULES

- 17.26 Members and officers of the Council shall comply with the requirements of section 117 of the Local Government Act 1972 and the Code of Conduct for Employees set out in Section 20 of the Constitution about the declaration of private interest in contracts with the Council.
- 17.27 Interests declared by Members must be reported to the Monitoring Officer for inclusion in the appropriate register. Interests declared by officers shall be reported to the Head of Service.

### Electronic procurement

- 17.28 Any electronic procurement process (e.g. E-tendering) can only be conducted using an electronic system approved by the Professional Lead - Commercial Services and / or Professional Lead - Finance.

### Spend Controls

- 17.29 Strategic Directors / Director / Heads of Service must maintain a list of names of officers who can procure or dispose of supplies, goods or works on behalf of the service, specifying a maximum financial limit for each transaction against each name. The list should be updated on a regular basis and any amendments notified to the Professional Lead – Commercial Services who will hold a central register covering this activity.

### ICT Procurement.

- 17.30 In order to safeguard the integrity of the Council's Information and Communication Technology infrastructure and the data held on the infrastructure, only the Head of ICT Services and his / her named delegates in the County ICT function may buy ICT hardware or software that connects to or operates on the County ICT infrastructure. In addition all ICT purchases (including services) must comply with County ICT Policy and Standards and must use existing framework agreements where they exist. Where such contracts do not exist all ICT purchases in excess of £25,000 must be directly approved by the Head of ICT Services and his / her named delegates.

### Pre-Contract Requirements

- 17.31 Before commencing a high risk / high value / or sensitive procurement process under these procedure rules, the Head of Service should consult with the Professional Lead - Commercial Services to ensure that the following is addressed:
- 17.31.1 whether the appropriate commissioning process has been undertaken with the appropriate sign-off achieved at each milestone;
  - 17.31.2 whether it is likely that similar provision is being proposed or is being currently used by another service area;
  - 17.31.3 the impact of the proposal on other Council Services;
  - 17.31.4 whether there is adequate budgetary provision agreed / in place for the anticipated spend;
  - 17.31.5 a discussion with the Head of ICT Services in respect of any ICT procurement and seek his / her approval for any procurement likely to exceed £25,000;

## **SECTION 17 – CONTRACT PROCEDURE RULES**

- 17.31.6 a Procurement Plan is produced in consultation with the Commercial Services Team for contracts featured in the forward work plan.

### **Forward Work Plan**

- 17.32 The relevant Head of Service shall ensure that in conjunction with the Commercial Services Team all procurement events contained within their service forward work plan includes (but not be limited to), details of the anticipated procurement activity, an appropriate procurement plan, spend and target savings.
- 17.33 The service forward work plan shall be reviewed annually and details outlined in the relevant service plan.

### **Sustainable procurement**

- 17.34 For all contracts of £150,000 or over, over the term, the Council shall take account of social, economic and environmental issues and a return on investment through the adoption of a community benefits approach when making strategic procurement decisions using the Sustainable Risk Assessment (SRA) template.

### **Data Processing Agreements**

- 17.35 Where a procurement involves the disclosure of personal data within the meaning of Section 1 of the Data Protection Act 1988, the relevant Strategic Director / Director / Head of Service shall ensure that where appropriate each procurement includes a Data Processing Agreement.

### **Contract terms and conditions**

- 17.36 All contracts shall be entered into on the Council's terms and conditions and this shall be stated on all requests for quotations and invitations to tender. The Council's terms and conditions will be made available on the Council's internet and a link will be provided on all requests for quotations, invitations to tender and purchase orders.
- 17.37 Exceptions to this rule must be approved in writing by the Council's Monitoring Officer.

### **Revenue earning contracts**

- 17.38 Any contracts relating to revenue earning must be referred to the Head of Legal Services and Monitoring Officer at the earliest possible instance and in any case before the procurement exercise commences.

### **Regeneration opportunities**

- 17.39 The relevant Strategic Director / Director / Head of Service must ensure that each commissioning and / or procurement plan has considered the regeneration opportunities for each proposal.

### **Quotations & Tenders**

- 17.40 At all times during the procurement process the Council shall ensure that all tenderers are treated equally and in a non-discriminatory and transparent manner.

## SECTION 17 – CONTRACT PROCEDURE RULES

- 17.41 Officers are required to take into account the cumulative spend of repeatedly using the same supplier to ensure that the tender thresholds set out in Rules 17.45 to 17.47 are not breached.

### Thresholds

- 17.42 Thresholds for procurement do not apply within existing framework agreements available for use by the Council.
- 17.43 The values under Rules 17.45 to 17.47 shall be the total or aggregate value of the contract over the whole contract period and not just the annual amount.
- 17.44 Even if the thresholds in Rules 17.45 and 17.46 are not breached, the Strategic Directors / Director / Heads of Service may still use one of the formal tendering procedures if for proper service reasons this is deemed appropriate.

### All goods & services except works

- 17.45 Up to £5,000 it is necessary only to demonstrate that value for money is being achieved following the principles contained in these procedure rules and in the Guidance for Officers document.
- 17.46 From £5,000 to £49,999 the spirit of these procedure rules should be followed and wherever practicable, a minimum of 3 written competitive quotes must be obtained from firms, who, preferably are registered on a national procurement website (currently Sell 2 Wales). Alternatively the requirement may be openly advertised on a national procurement website (currently Sell 2 Wales). Such quotations must be retained for a period of not less than two years from the date of the Contract award.
- 17.47 £50,000 or above must be tendered, and advertised on a national procurement website (currently Sell 2 Wales). Where the European Union threshold has been exceeded the procurement must be tendered and advertised in the official journal of the European Union. The relevant Strategic Director / Director / Head of Service shall ensure that the Commercial Services team are consulted before the advert is placed.
- 17.48 Where the competitive dialogue procedure is adopted a minimum of three tenders must be invited.

### Agency / Consortium Contracts

- 17.49 Where an Agency / Consortium arrangement is in force between the Council and Central Government, other Local Authorities or other public body then these procedure rules shall not be deemed to be breached if the Council is required to follow the procedure rules or Codes of Practice of that Agency, Local Authority or public body.

### Form of Contracts

- 17.50 Subject to Rule 17.51 below, every contract shall be made or confirmed in writing and signed by all parties concerned. Electronic signatures with an audit trail established via software approved by the Head of Legal Services and Monitoring Officer and the ICT Governance Group will be acceptable. High risk / high value / or sensitive contracts may only be signed by Strategic Directors / Director / Heads of Service or Head of Legal Services and Monitoring Officer . Strategic Directors / Director / Heads of Service may

## SECTION 17 – CONTRACT PROCEDURE RULES

delegate the ability to sign all other contracts to other officers PROVIDED THAT the delegation is made in writing and recorded in a register to be kept by each Head of Service.

17.51 Contracts entered into by means of the Council's approved Electronic Purchase Order system are permitted PROVIDED THAT the authorising officer has been appointed in accordance with Rule 16.404.9 (Financial Regulations).

17.52 Unless the Professional Lead - Finance or the Strategic Directors / Director / Heads of Service in consultation with the Head of Legal Services and Monitoring Officer and / or Professional Lead – Commercial Services, consider it to be unnecessary, every contract must include as a minimum the following basic terms and conditions:

17.52.1 a description / specification of the works, goods, materials or services to be provided or carried out;

17.52.2 the price to be paid or other consideration, the method, timing and frequency of payment and the calculation of any variations or increases;

17.52.3 the time by which or term within which the contract is to be performed;

17.52.4 the right for the Council to:

17.52.4.1 recover or withhold payment in the case of default;

17.52.4.2 cancel, suspend or terminate all or part of the contract;

17.52.4.3 perform the services itself or to replace the contractor;

17.52.4.4 recover all related costs.

17.52.5 to obtain an indemnity from the contractor to cover losses or liabilities incurred by the Council as a result of the contractor's action or neglect;

17.52.6 an obligation for the contractor to have sufficient Public and Employers' Liability Insurance and any other cover which is relevant to the contract;

17.52.7 an obligation to comply with all Health and Safety legislation, regulations and code of practices etc. applicable to the contract;

17.52.8 no right for the contractor to assign or sub-let the contract without the prior written consent of the Council;

17.52.9 that the Council can cancel the contract and recover any resulting losses if the contractor or his / her employees or agents with or without his / her knowledge:

17.52.9.1 does anything improper to influence the Council to award the contract. (In this respect the attention of employees of the Council is drawn to the Council's Codes of Conduct for Members and Employees which must be observed);

17.52.9.2 Commits an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972 or the Equality Act 2010. in relation to the contract.



## SECTION 17 – CONTRACT PROCEDURE RULES

17.52.10 that it is subject to the Laws of England and Wales.

- 17.53 Consideration must also be given to the inclusion and relevance to clauses relating to the Freedom of Information Act, Data Protection Act, sustainability, retentions, bonds or guarantees and the need to comply with the Welsh Language Act and the Council's own Welsh Language Scheme.
- 17.54 Contractors Standard Terms and Conditions should not be accepted without seeking advice from either the Professional Lead – Commercial Services or the Head of Legal Services and Monitoring Officer .

### **Tenders**

17.55 Except as specified in Rule 17.56 below where the consideration payable under any contract may reasonably be expected:

- 17.55.1 to exceed £100,000 in the case of a contract for the execution of construction or civil engineering schemes; or
- 17.55.2 to exceed £50,000 in the case of any other contract for the supply of goods materials and services or the execution of works (other than construction schemes referred to in Rule 17.55.1 above)

contractors shall be selected by the Strategic Directors / Director / Heads of Service by one of the following methods:

- 17.55.2.1 tendering by advertisement under Rules 17.64 to 17.66;
- 17.55.2.2 selective tendering from an approved contractors' list compiled in accordance with EU and UK procurement laws as set out in Rule 17.67.

### **Exemptions from tendering**

17.56 Subject to Rules 17.57 and 17.58 below contracts with a value below the EU threshold from time to time (but not above the EU threshold from time to time) may be authorised in advance by the Section 151 Officer even if their procurement has not been undertaken in accordance with Rule 17.55 in the following circumstances:

- 17.56.1 for the supply of goods, materials, services or works where there appears in the written opinion of the Strategic Directors / Director / Heads of Service to be only one supplier with no acceptable alternative and complies with Rule 17.58 below;
- 17.56.2 for the supply of goods or materials, services or works where the Council has decided to standardise by buying from only one supplier or where in the written opinion of the Strategic Director / Director / Head of Service the services, goods or specialised materials are required for which there is only a single source of supply and complies with Rule 17.58 below;
- 17.56.3 where in the written opinion of the Strategic Director / Director / Head of Service the extension, addition to or maintenance of existing goods, materials or services where this can only be done

## SECTION 17 – CONTRACT PROCEDURE RULES

- satisfactorily by the original contractor or supplier and complies with Rule 17.58 below;
- 17.56.4 for the urgent supply of goods, materials, services or works where the Strategic Directors / Director / Heads of Service has certified in writing that the tender process would prevent the supply within the timescales required. Such urgency should not ordinarily have been created by earlier in-action or lack of forward planning, but where the urgency has been so created the Section 151 Officer may nevertheless approve the request subject to such conditions as s/he considers necessary to ensure future compliance with these procurement rules;
- 17.56.5 for the supply of used or second-hand goods or materials where the Strategic Directors / Director / Heads of Service has certified in writing that the market for such goods or materials is such that it would be unreasonable to tender or where the time required to complete the tender process is likely to lead to the loss of opportunity to purchase a used or second-hand item;
- 17.56.6 for the supply of goods, materials, services or works in any other circumstances where the Strategic Directors / Director / Heads of Service / Professional Lead - Finance has certified in writing that there are proper service reasons for not tendering for the supply of goods, materials, services or works and that they are satisfied that there will be no economic disadvantage to the Council as a result of not so tendering.
- 17.57 Requests for exemptions under Rules 17.56 must be submitted to the Section 151 Officer for approval via the Professional Lead – Commercial Services. No exemption will be deemed agreed until written consent is obtained from the Section 151 Officer.
- 17.58 When a Strategic Directors / Director / Heads of Service makes a request for an exemption under Rules 17.56.1 to 17.56.3 above s/he must certify in writing on each occasion that the advantages and disadvantages of proceeding with a single supplier are documented.
- 17.59 All exemptions granted by the Section 151 Officer in accordance with Rules 17.56 and 17.57 shall be recorded in the Exemptions Register.
- 17.60 A contract may also be entered into other than in accordance with Rule 17.55:
- 17.60.1 where the contract is awarded through a Consortium, Association or similar body, of which the Council is, for the time being, a member, or is able to use; or .
- 17.60.2 where the Council, or the Cabinet considers that there are special circumstances justifying the waiving of procedure rules and authorises such waiver by resolution.
- 17.61 Subject to Rule 17.58 below, all contracts shall be governed by either the Council's own Conditions of Contract (as varied or amended from time to time, such variations and / or amendments being consistent with and in accordance with the Council's Commissioning and Procurement Strategy)

## SECTION 17 – CONTRACT PROCEDURE RULES

or such other forms of contracts as may be approved from time to time by the Head of Legal Services and Monitoring Officer .

- 17.62 The Council may if appropriate use a Contractors' Terms and Conditions with the approval of the Head of Legal Services and Monitoring Officer and provided that they include, or are amended to include, the matters referred to in Rule 17.56.
- 17.63 The Financial Regulations for Schools with Delegated Budgets as set out in the scheme for financing schools may allow for alternative arrangements in respect of Schools with Delegated Budgets provided that those arrangements follow these procedure rules wherever possible and in all cases adhere to the EU and UK procurement laws.

### **Tendering By Advertisement**

- 17.64 Subject to Rules 17.65 and 17.66 below, all tender opportunities must be advertised via a national procurement website (currently Sell 2 Wales) and in accordance with EU and UK procurement laws where appropriate
- 17.65 An advertisement may appear in the local press, where, in the opinion of both the Head of Service and the Professional Lead – Commercial Services there is unlikely to be a satisfactory response having regard to the nature of the goods, materials, services or works being procured.
- 17.66 The advertisement may also appear in an appropriate trade journal and / or national newspaper or such other media where in the opinion of the Head of Service and the Professional Lead – Commercial Services this is likely to be to the advantage of the Council.

### **Selective Tendering from an Approved Contractors' List**

- 17.67 The intention of such lists is to ensure the availability of suitably qualified contractors for work of a recurring nature for which several contracts a year may be issued (for example, highway maintenance work).

### **Creation of Approved Lists**

- 17.68 When for operational reasons a Head of Service believes that the procurement of goods and / or services could best be undertaken by selection of an approved list of contractors, the Head of Service must ensure that the list of contractors is compiled in accordance with the EU and UK procurement laws and only after consultation with the Professional Lead – Commercial Services.

### **Inviting Tenders**

- 17.69 Every Invitation to Tender (ITT) must include as a minimum the following documentation or information or via a Framework Agreement:
- 17.69.1 a description / specification of the works, materials, goods or services to be carried out / supplied together with a required delivery date or term;
  - 17.69.2 applicable Terms and Conditions (including Certificates as to Canvassing and Collusive Tendering) in accordance with Rule 17.61;
  - 17.69.3 Form of Tender specifying the period which the Tender is open for acceptance;

## SECTION 17 – CONTRACT PROCEDURE RULES

- 17.69.4 the criteria to be used to evaluate and award the Contract will ordinarily include a reference to the most economically advantageous tender and in the case of contracts to be awarded in accordance with EU thresholds, weighted criteria;
  - 17.69.5 the fact that the Council does not bind itself to accept the lowest or any tender;
  - 17.69.6 a set of Instructions to Tenderers detailing the administration arrangements regarding the procurement process (including the tender deadline).
- 17.70 Every ITT must state that a tender will only be considered if it is received by the due date and time and the means by which the tenders should be returned.
- 17.71 Tenders in paper format may only be invited after prior written approval from the Professional Lead - Commercial Services.

### **Receipt and Opening of Tenders.**

- 17.72 A record of all tenders received must be made on the date of opening and retained for a period of 3 years. Such records shall include the name of the tenderer, the nature of the goods, services, materials or works, the date, the price or consideration (where this is possible), the name of the officer and in respect of a paper tender only the name of the Cabinet Member present.
- 17.72.1 The Head of Professional Services and Commissioning having consulted with the appropriate Strategic Director / or Director / or Head of Service, may at his / her absolute discretion permit consideration of a tender submitted after the tender deadline PROVIDED THAT:
- 17.72.1.1 s/he is satisfied that it is in the best financial interests of the Council to do so; and
  - 17.72.1.2 s/he is satisfied that the tenderer has not secured an advantage over the other tenders by failing to submit a tender before the tender deadline; and
  - 17.72.1.3 the decision to admit the tender is taken before the remaining tenders are opened.
- 17.72.2 A tender which has been properly submitted in accordance with the ITT (or would have been properly submitted but for a fault for which the Council and / or its IT suppliers are responsible) but for some reason has not been recorded shall be dealt with as follows:
- 17.72.2.1 if it is presented to the Head of Legal Services and Monitoring Officer before the other tenders have been opened but after the closing date then it shall be considered along with the rest;
  - 17.72.2.2 if it is presented to the Head of Legal Services and Monitoring Officer after the other tenders have been opened then provided the Head of Legal Services and

## SECTION 17 – CONTRACT PROCEDURE RULES

Monitoring Officer is satisfied that the tender was received by the Council in accordance with the ITT it may be considered.

### Evaluation of Tenders

- 17.73 For most contracts and for all contracts governed by EU and UK procurement law a tender evaluation procedure based on a price quality ratio should be used. Where a price quality ratio is not used, approval must be obtained from the Professional Lead - Commercial Services
- 17.74 All evaluations shall score tenders objectively using criteria which have been weighted in order of importance, and published in the ITT and will normally include whole life costing where the full cost of maintenance, decommissioning and disposal should be taken into account.
- 17.75 The published criteria and weightings must be strictly observed at all times throughout the evaluation process.
- 17.76 The members of the evaluation panel should be identified by the Service Area and / or support services at the earliest opportunity and wherever possible should be involved in establishing the evaluation criteria, weightings and the questions to be asked of Tenderers.
- 17.77 All evaluators must be appropriately trained in the use of the electronic evaluation process and the application of the relevant scoring regime.

### Accepting Tenders

- 17.78 The Strategic Directors / Director / Heads of Service may approve the amendment of a tender after it has been received and before it has been accepted only to enable the correction of a genuine error, but only after consultation with the Head of Legal Services and Monitoring Officer and / or Professional Lead - Commercial Services.
- 17.79 The Strategic Directors / Director / Heads of Service may accept other than the lowest tender where the goods, materials, services or works tendered for are not available for immediate supply by the winning tenderer in breach of contract and where (a) specifically provided for in the tender documentation and (b) in the opinion of the Strategic Director / Director / Head of Service after consultation with the Head of Legal Services and Monitoring Officer and/or the Professional Lead - Commercial Services the contract may awarded to the second placed tenderer

### Debriefing

- 17.80 Information must be made available to tenderers via contract award notices. For contracts awarded over the EU threshold the contract award notices must be sent for publication in the Official Journal of the European Communities not later than 30 days after contract award and in the form of notice prescribed in the relevant regulations.
- 17.81 The responsible officer shall ensure that within 15 days of the date on which the Council receives a request in writing from any supplier who was unsuccessful (at either the selection or tender stage) inform that supplier of the reasons for being unsuccessful and, if the supplier was unsuccessful at the tender stage, the responsible officer shall inform him / her of the characteristics and relative advantages of the successful tender as well as the name of the person awarded the contract.

## SECTION 17 – CONTRACT PROCEDURE RULES

- 17.82 Requests from losing tenderers for face to face debriefing meetings should be referred to the Commercial Services Team.
- 17.83 If any additional information is to be disclosed to tenderers, this must be agreed in advance with the Professional Lead - Commercial Services, taking into account the requirements of any legislation relating to the disclosure of information.

### Contracts Register

- 17.84 All contracts over the value of £5,000 over the term must be recorded on the Council's Contracts Register. It is the duty of the Head of Service to ensure that their officers comply with this Rule 17.84.

### Record and document retention and control

- 17.85 All tenders, once assessed shall be retained in secure storage (including secure electronic storage). All contracts under seal i.e. Deeds (including Tenders) to be retained for a minimum of 12 years; contracts under hand for a minimum of 6 years; unsuccessful tender documents for 2 years.

### Contract management

- 17.86 All high risk / high value / or sensitive contracts must have a named Council contract manager for the duration of that contract. All such contracts are to have regular, documented reviews with the contractor. The reviews should include but not be limited to:

- 17.86.1 business transfer;
- 17.86.2 service implementation;
- 17.86.3 operational issues;
- 17.86.4 compliance with contract terms;
- 17.86.5 compliance with financial terms.

### Contract variation

- 17.87 Variation refers to a change to the terms of the agreement that the parties had previously agreed and accepted when the contract was signed.
- 17.88 The relevant Strategic Director / Director / Head of Service is authorised to agree any variations to an existing Contract provided that this still represents the most economically advantageous solution for the Council and does not significantly alter any proposal previously agreed by the Council.
- 17.89 Contract variations should only be approved if they do not amount to a material change to the contract that was originally procured.
- 17.90 Variations must not be confused with claims, which usually arise from unforeseen issues or outside events. The contractors' right to claim arises from general law and does not require the consent of the Council. The term 'claim a variation' is misleading. A contractor either applies for a variation or makes a claim.
- 17.91 The form of all contract variations must be approved by the Head of Legal Services and Monitoring Officer or an officer nominated by him / her.
- 17.92 Agreed variations must be in writing and signed by all parties to the contract and recorded in the Council's Contracts Register. It is the duty of the Head of Service to ensure that their officers comply with this Rule 17.92

## SECTION 17 – CONTRACT PROCEDURE RULES

### Contract Extensions

- 17.93 A contract extension is a type of variation requiring continuation of a contract after its stated expiration date.
- 17.94 The decision to extend the contract period (term / duration) may only be made before the original expiry date, where it is in accordance with the terms and conditions of the original contract and contemplated by the original procurement exercise.
- 17.95 Where the terms of the contract and or original procurement exercise do not expressly provide for extension then such a contract may only be extended in exceptional circumstances, where legislation permits and value for money issues have been addressed. Such decisions shall be made by the relevant Head of Service in consultation with the Professional Lead - Commercial Services and / or Head of Legal Services and Monitoring Officer .
- 17.96 Contract extensions made pursuant to Rule 17.95 and which amount to a material change to the terms of the contract that was originally procured should be strictly time limited to allow a new procurement process to take place.
- 17.97 All extensions must be in writing and recorded in the Council's Contracts Register. It is the duty of the Head of Service to ensure that their officers comply with this Rule 17.97

### Financial Limits

- 17.98 Where any financial threshold is specified in these Contract Procedure Rules, that figure is at 15th July 2015 and may be reviewed from time to time as appropriate by the Section 151 Officer and the Monitoring Officer has delegated authority to amend the Constitution accordingly without reference to Full Council.

### Disposals

- 17.99 Although the Council will in the majority of cases be acquiring goods, materials, services or works, these Contract Procedure rules equally apply to any disposal or provision by the Council and shall be followed whenever possible and appropriate.
- 17.100 The Council should seek to obtain best value for any item of which it disposes which may mean a competition between interested parties and this may involve the use of an electronic auction site.
- 17.101 Advice should be taken from the Head of Regeneration, Property and Commissioning (or an officer nominated by him / her) and / or the Professional Lead – Commercial Services when disposals are being considered to discuss the appropriate method or process to be used. Reference should also be made to the section on Asset Disposal in the Financial Regulations.
- 17.102 In the case of land disposals (including buildings) reference must be made to the Council's Corporate Asset Policy on disposals with compulsory consultation with the Corporate Property Officer and the Head of Regeneration, Property and Commissioning (or an officer nominated by him / her).
- 17.103 In the case of work carried out or services provided by the Council for third parties, the Local Authorities (Goods and Services) Act 1970 allows this on

## **SECTION 17 – CONTRACT PROCEDURE RULES**

behalf of defined Public Bodies. It is not permitted (apart from some exceptional circumstances) to provide services or carry out work to private individuals or to companies and, where this is being considered, advice must be sought from the Head of Legal Services and Monitoring Officer .

### **Compliance with Procedure rules**

- 17.104 It is an implied condition of employment of all staff of the Council with responsibility for the administration of contracts that they should at all times observe the provisions of these Contract Procedure Rules and the Council's Financial Procedure Rules. Failure to do so may be regarded as a serious disciplinary matter.
- 17.105 Strategic Directors / Director / Heads of Service are responsible for ensuring that all staff in their directorates are aware of the existence and content of these Contract Procedure Rules and that they comply with them.

### **Review and amendment of contracts procedure rules**

- 17.106 The Professional Lead – Commercial Services shall continually review these contract procedure rules and shall undertake a formal review every five years. Any proposed amendments will be reported to Full Council for approval save as otherwise provided in these Contract Procedure Rules.