

# **Contract Procedure Rules**

## Contract Procedure Rules

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## **1. INTRODUCTION**

- 1.1 These Contract Procedure Rules provide a corporate framework for the procurement of all goods, services and works for the Council. The Rules are designed to ensure that all procurement activity is conducted with openness, probity and accountability. Above all, the Rules are designed to ensure that the Council complies with the statutory framework, obtains value for money and the required level of quality and performance from all contracts that are let. Every contract for the supply of goods and services and for the execution of works made by or on behalf of the Council shall comply with these Rules and the Public Contracts Regulations 2015 (“the Regulations”) and the Procurement Act 2023 when in force.
- 1.2 The Council has a joint procurement service with Bolsover District Council (“the Procurement Team”). This includes advice on procurement and tendering procedures and the provision and management of the e-tendering system on the Council’s behalf.
- 1.3 E-procurement procedures shall be used wherever possible. These include e-purchasing, e-tendering, purchase cards and others. Where appropriate e-auctions may be used, so long as provision is made for this in the advert. No e-tendering system should be used without the approval of the Section 151 Officer. Requests for quotations, Pre-qualification questionnaires and Invitations to tender should wherever practical be issued to tenderers by electronic means. Where e-tendering is utilised then this must be undertaken by way of the corporate e-tendering system which is managed on the Council’s behalf by the Procurement Team.
- 1.4 Before any tendering exercise is considered, reference must be made to the Council’s procurement and equalities guidelines. The Council is committed to dealing fairly with all relevant discrimination groups as defined in the Equality Act 2010. A failure to take into account special requirements for these groups in a tender would be a significant corporate failure, affecting the reputation and standing of the Council.
- 1.5 All procurement arrangements must ensure compliance with the Council’s responsibility in respect of the Freedom of Information Act 2000, Environmental Information Regulations 2004 and the Data Protection Act 2018 and the UK General Data Protection Regulation.
- 1.6 Any employee who fails to comply with Contract Procedure Rules may be subject to disciplinary action.
- 1.7 If in doubt in respect of any part of the process or rules contact the Procurement Team for advice.
- 1.8 A Glossary of Terms can be found at Appendix B.

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

- 2.1 The provisions contained in these Rules are subject to the statutory requirements of the United Kingdom. The letting and content of Contracts shall

conform to all statutory requirements, principally the Public Contracts Regulations 2015 (“the Regulations”), and be subject to any changes as introduced by the Public (Amendment etc.)(EU Exit) Regulations 2020 (the EU Exit Regulations) or any subsequent UK amendment.. They shall also be compliant with the Procurement Act 2023 when in force. These Rules cannot be waived, since a failure to comply with legislation may result in a legal challenge with consequent reputational and financial risk. If you are uncertain, advice should be sought from a member of the Procurement Team or the Monitoring Officer.

2.2 In estimating relevant contract values pre procurement, officers shall have regard to the rules regarding aggregation. See Appendix ‘A’. if it is likely that the value is at or above the £25,000, threshold (see 5.5 below) contact the Procurement Team for advice.

### 2.3 **Partnerships**

2.4 These Rules apply to any proposal for the Council to become involved in a joint venture or partnership, including the monitoring of any such arrangement.

- In relation to the Rules, a joint venture or partnership includes any arrangement involving one or more organisation in addition to the Council through which either a specific project or services within any of the functions of the Council are to be provided, and
- Provides a role for the Council or any of its members or officers in whatever structure is used to deliver the project or services involved (such structures may include, but are not limited to, companies, trusts and management committees).

2.5 Where partnership arrangements, or working with other bodies, are used in order to procure goods or provide services consultation must take place with the Head of Paid Service, the Monitoring Officer and the Section 151 Officer prior to entering into such arrangements. Such arrangements should only be pursued on the basis that appropriate approval from the Council’s statutory officers and from appropriate Council bodies has been secured prior to any formal commitments being given.

## 3. **NORMAL PROCEDURE**

3.1 These Rules apply as detailed in 5.3 – 5.6 below

3.2 In all instances, goods, services or works should be obtained via the methods outlined below:

- (a) in-house services (no procurement)
- (b) established corporate contracts or framework agreements
- (c) request for quotation (RFQ)
- (d) Invitation to Tender (ITT)
- (e) framework contracts established by Purchasing Consortia or other Local Authorities (following advice from the Procurement Team)

- (f) for low-value purchases, Credit Cards can be used provided they are not used with the intention of undermining the use of approved or corporate contracts, or to circumvent the procedures set out within these Rules.

In considering whether to utilise any of the above options officers must take into account the fact that their use is subject to UK Law.

3.3 Orders and payments for goods, services and works shall be undertaken in accordance with the Finance Rules and legal requirements.

3.4 Before commencing a procurement exercise, the authorised officer must:

- (a) Be satisfied that a specification (where appropriate) that will form the basis of the contract has been prepared (the specification should be retained on the appropriate contract file held within the service), (b) Have prepared and documented an estimate of the cost of the contract including, where appropriate, any maintenance and on-going costs (the estimate should be retained on the appropriate contract file held within the service), and ensured there is sufficient budget approved.

(c) Ensure that all evaluation criteria have been determined in advance, put into order of relative importance with weightings for each element and published in the tender pack;

3.5 Before entering into a contract the authorised officer must:

(a) Be satisfied about the technical capability of such proposed contractor and be satisfied that they have the power and authority to enter into the contract;

(b) Ensure that these Rules have been complied with, and that the proposed contract represents value for money; and

(c) For all ITT's ensure the finance and resource capacity of the contractor has been reviewed through the Procurement Team and Finance such as 3 year's audited accounts and or credit checks.

(d) Ensure the appropriate form of contract or terms and conditions have been agreed.

(e) Ensure all relevant approvals are in place including a delegated decision or Cabinet decision, if required.

### **3.6 Advertising**

It is good practice that all opportunities shall be advertised (and some must be advertised) and, where appropriate, full details should be available for download from the Council's website and the Council's Intend portal (See the Procurement Team for details). As part of the Government's Transparency Agenda details of all forthcoming contracts should be published on the Council's website at the earliest opportunity. When the contract value is £25,000 or above details must also be published on the Government's Contracts Finder website. Details of such contracts must be provided to the Procurement Team who will arrange for appropriate advertising to be undertaken. Contract award notices shall also be published on the Council's

website and on Contracts Finder within 90 days of the contract being advertised.

Officers should consider whether the contract will be of benefit to other public sector bodies. If so consideration should be given to including text along the following lines in the advert:

"Tenderers should be aware that although the contracting authority for the purposes of this procurement is North East Derbyshire District Council one or more other local authorities and/or public bodies may choose to access the concluded contract, without creating any obligation on behalf of any of them to do so."

Such text should only be incorporated with the approval of the Procurement Team.

- 3.7 All FTS notices shall be referred, in advance of sending to FTS, to the Procurement Team to advise on wording.
- 3.8 Where the contract is over the FTS threshold the Council must offer unrestricted and full direct free of charge access online to the procurement documents from the date of publication of the notice in FTS.

#### **4 EXEMPTIONS TO CONTRACT PROCEDURE RULES**

- 4.1 Subject to statutory requirements tenders need not be invited in accordance with these Rules in the following cases:
  - (a) the goods or services are proprietary articles and in the opinion of the appropriate Senior Officer no reasonably satisfactory alternative is available.
  - (b) The work to be executed or the goods or services to be supplied are controlled by a statutory body.
  - (c) The work to be executed or the goods or services to be supplied constitutes an extension to an existing contract and it is the view of the Senior Officer that it would not be in the interest of the service or the Council to tender the contract. The Senior Officer or their nominee should consult with the Procurement Team and a record of the decision must be placed on the project file.
  - (d) The contract is for the execution of work or the supply of goods or services certified by the appropriate Senior Officer to be required so urgently as to preclude the invitation of tenders. The appropriate Portfolio Holder shall be kept informed of such decisions and a record of the decision shall be retained by the service and a copy sent to the Procurement Team.
  - (e) The contract relates to commissioning, where, for example, there is no or insufficient marketplace to tender for the supply of goods, services or works required.

All contracts that fall within the above exemptions shall be notified in writing to the Section 151 Officer and the Monitoring Officer via a Delegated Decision.

- 4.2 Nothing contained in the above exceptions exempts officers either from using the Council's internal services where appropriate, or from following established arrangements in Rule 3.2. Officers should ensure that the best possible balance of value for money and quality is obtained for the Council.
- 4.3 Tenders need not be invited where they have been undertaken by any consortium, collaboration or similar body, where the Council is able to access contracts. Officers should seek assurance to ensure that any contracts let by such a consortium, collaboration or similar body are in accordance with UK procurement law and regulations.
- 4.4 Where the Council acts as lead body on a consortium or collaborative arrangement, the procedures for tendering contained within these Rules shall be followed.

## **5 CONTRACTS AND FINANCIAL GUIDELINES**

- 5.1 Officers should order goods and services that are required through an arrangement illustrated in Rule 3.2. If the Council or the consortium providing them do not have the goods or services or resources available to meet the reasonable needs of the service then an alternative supply may be sourced. In these circumstances the authorised officer must record why the goods or services have been procured through other means, and retain a formal copy of that document. In all circumstances a purchase order must be issued as required by Finance Rules .

### **Low value awards up to £499**

- 5.2 It is good practice (for all but small value and routine purchases) to request a written quotation from at least three suitable suppliers. Should suppliers not return a quote, the award can still proceed subject to the authorised officer being satisfied that there is compliance with Rule 3.5.
- 5.3 For low value awards up to £499 5.2 need not apply however it is the responsibility of the authorised officer to be satisfied that best value is achieved. Purchase Orders must still be raised.

### **5. Contracts £500 to £10,000**

Procurement of goods and services estimated to be for amounts in the range £500 to £10,000 shall be by written quotations requested from at least three suppliers, unless an arrangement under Rule 3.2 has already been established for the goods, services or works required. There is no mandatory Procurement Team involvement, however the Procurement Team will provide support if required. A record of the successful quote should be retained including the purchase order and copies forwarded to the Procurement Team

Contract terms to be the Council's Terms and Conditions through a Purchase Order unless otherwise agreed by the Legal Services Manager.

#### **5.5 Contracts £10,001 to £25000**

Procurement of goods and services estimated to be for amounts in the range £10,001 to £25000 shall be by written quotations requested from at least three suppliers, unless an arrangement under Rule 3.2 has already been established for the goods, services or works required. There is no mandatory Procurement Team involvement, but it is recommended. A record of the successful quote should be retained including the purchase order and copies forwarded to the Procurement Team

Contract terms to be the Council's Terms and Conditions through a Purchase Order unless otherwise agreed by the Legal Services Manager.

#### **5.6 £25,001 to £125,000**

Procurement of works goods and services estimated to be for amounts in the range £25,001 to £125,000 shall be by formal written request for quotation (RFQ) from at least three suppliers, unless an arrangement under Rule 3.2 has already been established for the goods, services or works required. Details must also be published on the Government's Contracts Finder website, which must be done through the Procurement Team

The evaluation should be led by the Assistant Director

Contract terms to be agreed by the Legal Services Manager

#### **5.7 £125,001 to FTS Threshold**

Procurement of goods and services estimated to be £125,001 to FTS Threshold shall be by formal open Invitation to Tender (ITT) or a compliant framework process.

Where contracts of this value are undertaken then appropriate professional support must be secured from the Procurement Team and/or an appropriately qualified external advisor.

The tender evaluation should be led by an Assistant Director with invites to the evaluation for Finance and Legal.

ITTs are only managed by way of a corporate e-tendering system operated on the Council's behalf by the Procurement Team. This provides a clear electronic audit trail of the tender process.

Contract terms to be agreed by the Legal Services Manager

#### **5.8 FTS threshold and above**

Procurement of goods and services estimated to be at FTS Threshold and above shall be by formal open Invitation to Tender (ITT) or an FTS compliant framework process.

Where contracts of this value are undertaken then appropriate professional support must be secured from the Procurement Team and/or an appropriately qualified external advisor. There are statutory time limits that must be complied with.

The tender evaluation should be led by an Assistant Director with invites to the evaluation for Finance and Legal.

Responses to Selection Questionnaires (SQs) and quotations (RFQs) are not deemed to be tenders and should be returned to the originating officer, either via hard copy or electronically.

ITTs are only managed by way of a corporate e-tendering system operated on the Council's behalf by the Procurement Team. This provides a clear electronic audit trail of the tender process.

FTS Threshold: PPN 11/23: New Thresholds – GOV.UK ([www.gov.uk](http://www.gov.uk))

Contract terms to be agreed by the Legal Services Manager.

- 5.9 In considering whether or not a procurement exercise is subject to FTS requirements you must ensure advice is secured throughout the tendering and contractual process and consult with Legal Services and the Procurement Team. In particular you should consider whether extensions to a contract or operating it for a period in excess of one year will breach FTS financial limits. Where any contract has a value above or approaching FTS limits it is the responsibility of the client officer to ensure that appropriate procurement and legal advice is secured throughout the tendering and contractual process. If in doubt seek advice.

## **6 Decision Making**

- 6.1 In every instance appropriate written documentation must be retained together with the rationale for the decision making process. This documentation shall meet, as a minimum, the requirements specified in the 2015 Public Contract Regulations (as amended) and is required to be kept for at least 6 years. In addition, any information that may be required for submitting annual reports to the Government or other agencies must be maintained.
- 6.2 Documentation in either paper or electronic format must be appropriately filed and retained for an appropriate period of time. The Council's Document Retention Policy will provide appropriate background guidance but ultimately the senior officer involved must determine the retention period which cannot be less than 6 years.
- 6.3 Contracts over £25,000 for goods, services and works must be registered on the Contracts Register and an electronic copy of the original contract documents held centrally and securely in Legal Services.
- 6.4 Tenderers may be offered a debrief to assist them in preparing future bids. The relevant officer should also keep a record of all debrief requests and responses.



6.5 Any company responding to an FTS tender shall be excluded from the tender process if it, or its directors have been convicted of; corruption, bribery, cheating the revenue, fraud or theft, fraudulent trading, an offence in connection with taxation, an offence under Counter Terrorism legislation or money laundering. Where a service has information relating to the above, contact the Monitoring Officer and the Procurement Service for advice.

## **7 OPENING INVITATIONS TO TENDER (ITT)**

7.1 All e-tenders will be submitted to and held in a secure electronic vault. This may only be opened by the Procurement Team after the due date for tenders has closed.

7.2 The lead officer of the evaluation team is responsible for ensuring that the team is adequately resourced to ensure compliance with the law and with accepted good practice.

## **8 EXTENSION OF DEADLINE FOR RECEIPT OF TENDERS**

8.1 Where a tender is submitted in competition and is received after the specified time then it shall be disqualified. Before the specified time has been reached, the S151 Officer may determine whether to extend the deadline.

## **9 ACCEPTANCE**

9.1 Contracts shall be evaluated and awarded in accordance with the evaluation criteria issued with the tender documentation. Only those tenders that comply with the evaluation criteria shall be considered for acceptance. Tenders must be accepted on the basis of “most economically advantageous” tender (MEAT) that complies with requirements of tender documents, is not excluded by virtue of Regulation 57 of the Regulations and meets the selection criteria. Cost-effectiveness and the price-quality ratio may be taken into account when determining MEAT.

9.2 A tenderer who submits a qualified or conditional tender shall be given the opportunity to withdraw the qualification or condition without amendment to the tender. If the tenderer fails to do so the tender must be rejected.

9.3 Prior to final contract award, the contractor must provide evidence of adequate insurance to cover both public and employers’ liability, and produce such evidence during the life of the contract at the reasonable request of the authorised officer.

9.4 For all procurements covered by the FTS Directives, a statutory minimum standstill time after the award decision is issued is required to allow companies an opportunity to challenge the decision. The standstill time depends on the circumstances and is set out in Regulation 87 of the Regulations.

The notification of the award decision, based on the most economically advantageous tender, must be issued in line with the timescales of the standstill period and should contain;

- the award criteria;
- the reasons for the decision, including the characteristics and relative advantages of the successful tender and the score (if any) obtained by the recipient and the successful tender;
- the name of the winning tenderer;
- the confirmation of the standstill period.

9.5 For contracts between £25,000 and FTS threshold , the following details of contracts that have been awarded should be forwarded to the Procurement Team so that they can be advertised on the Contracts Finder website:

- name of contractor;
- date contract entered into;
- Length of contract
- contract value;
- whether contractor was SME or VCSE.

## **10 CONTRACT CONDITIONS**

10.1 Every contract for goods or services or works regardless of value shall be in writing and shall specify:

- (1) the work, materials, matters or things to be furnished, acquired or done;
- (2) the price to be paid, with a statement of discounts or other deductions; and
- (3) the time, or times within which the contract is to be performed.

Contracts should be in a form agreed by the Legal Services Manager

## **11 EXTENDING EXISTING CONTRACTS**

11.1 The authorised officer, subject to the budget being available, and after consultation with the appropriate Senior Officer, may extend a contract subject to the extension being within the scope of the original scheme (subject to Rule 4.1.c).

11.2 If the original contract was above the FTS threshold, the contract can only be extended if it meets one of the six statutory grounds as set out in Relation 72 of the Regulations. Advice should be sought from Legal Services and the Procurement Team.

## **12 PERFORMANCE BONDS AND GUARANTEES**

12.1 The authorised officer shall determine, based on advice from the Section 151 Officer, the degree of security (if any) required to protect the Council from a

contractor default. This may be a performance bond or some other form of financial or performance guarantee.

- 12.2 Where a performance bond and/or parent company guarantee is required, then the tender documents must provide for this.

### **13 LIQUIDATED DAMAGES**

- 13.1 Any contract which is estimated to exceed FTS Thresholds in value or amount, and is for the execution of works, or for the supply of goods or services by a particular date or series of dates, may provide for liquidated damages. The amount to be specified in each such contract shall be determined by a Senior Officer in consultation with Legal Services and Finance.

### **14. CONTRACT FORMALITIES**

- 14.1 Agreements shall be completed as follows:

Total Value	Method of Completion	By
Up to £125,000	Signature	Senior Officer see 17.2
£125,000 and above	Sealed	see 17.3

#### **14.2 Signature**

The Officer responsible for securing signature of the contract must ensure that the person signing for the other contracting party has relevant authority.

#### **14.3 Sealing**

Where contracts are completed by each side adding their formal seal, the affixing of the Council's seal will be attested by the Solicitor to the Council, or in their absence, anyone delegated the function together with an elected Member.

An entry of every sealing shall be made and consecutively numbered in the register. The seal must not be affixed without the authority of the Cabinet, a Committee, or a Senior Officer acting under delegated powers. A contract must be sealed where:

- the Council may wish to enforce the contract more than six years after its end; or
- the price paid or received under the contract is a nominal price and does not reflect the value of the works, goods or services; or
- there is any doubt about the authority of the person signing for the other contracting party.

#### **14.4 Signatories for contracts**

The Monitoring Officer maintains a list of approved signatories.

#### **14.5 Archiving & lodgement of records**

The original sealed contract must be deposited with the Council's Legal Services and recorded on the Contracts Register.

### **15 ENGAGEMENT OF CONSULTANTS**

- 15.1 An authorised officer may only appoint external consultants or advisors providing professional or consulting services if such services are not available within the Council or if Council officers providing them do not have the resources to meet the needs of the service. Where such services are available in-house, the authorised officer must consult with the Head of Paid Service before taking any decision to make an external appointment. This excludes agency recruitment which should follow existing HR processes.
- 15.2 Consideration should be given to using the appropriate frameworks as appropriate.
- 15.3 External consultants and technical officers engaged to supervise contracts must follow these Rules as applicable and their contracts for services must state this requirement.
- 15.5 In estimating relevant contract values, officers shall have regard to the rules regarding aggregation. See Table A
- 15.6 All contracts for external consultants and advisors shall explicitly require that the consultants or advisors provide without delay any or all documents and records maintained by them relating to the services provided on request of the authorised officer, and lodge all such documents and records with the appropriate officer at the end of the contract.
- 15.7 The authorised officer shall ensure that any consultant working for the Council has appropriate indemnity insurance.

### Appendix A - Financial Thresholds and Aggregation Rule

		Procurement Route	Award Procedure based on	Documentation	Terms and Conditions requirement
From	To				
£0	£499	Purchase Order	Authorising officer decision, based on best value	None	Contract terms to be the Council's Terms and Conditions through a Purchase Order unless otherwise agreed by the Legal Services Manager.
£500	£10,000	Written quotation	Minimum of 3 quotations	A record of the successful quote should be retained including the purchase order and copies forwarded to the Procurement Team	Contract terms to be the Council's Terms and Conditions through a Purchase Order unless otherwise agreed by the Legal Services Manager.
£10,001	£25,000	Written quotation	Minimum of 3 quotations.  Procurement team to support as required.  <i>(Where the £25,000 threshold is exceeded following receipt of quotes Procurement advice must be sought before proceeding)</i>	A record of the successful quote should be retained including the purchase order and copies forwarded to the Procurement Team	Contract terms to be the Council's Terms and Conditions through a Purchase Order unless otherwise agreed by the Legal Services Manager.
£25,001	£125,000	Formal written request for quotation (RFQ)	3 written quotations.  Procurement Team involvement required	A record of the RFQ responses and evaluation should be retained.  Details must be published on Contracts Finder (procurement team do this)	Contract terms to be agreed by the Legal Services Manager

£125,000	FTS Threshold	Formal open invitation to tender (ITT) or a compliant framework process	ITT response and evaluation Procurement team involvement required	A record of the ITT responses and evaluation should be retained.  ITT's managed by the procurement team by way of the corporate e-tendering system.	Contract terms to be agreed by the Legal Services Manager
FTS Threshold and above		Mandatory formal open Invitation to Tender (ITT) or an FTS compliant framework process.	ITT response and evaluation Procurement team involvement required	A record of the ITT responses and evaluation should be retained.  ITT's managed by the procurement team by way of the corporate e-tendering system.  FTS Threshold: PPN 11/23: New Thresholds – GOV.UK (www.gov.uk)	Contract terms to be agreed by the Legal Services Manager.

**NB The Contract Value shall be calculated as follows:** The estimated or proposed contract value is the value or consideration for the contract as a whole (not an annual value) and any contract with an option to extend the contract period will be valued to include also any provision for such extended period (e.g. a three year contract with an option to extend for a further two years will be valued as the consideration for a five year contract).

NB Aggregated contract values must comply with limits detailed in this Table and at section 5 of these rules.

## **Appendix B - Glossary of Definitions;**

**Authorised Officer** Means any officer who by the nature of his or her job, or as directed by a manager, is authorised to place orders.

**Contract** Means any form of contract, agreement or other arrangement for the supply of goods, services or works.

**Goods** Covers all supplies and materials that the Council purchases or obtains.

**Senior Officer** Means one of the following: Directors and Assistant Directors.

**Services** Includes all services which the Council purchases or obtains including advice, specialist consultancy work, agency staff, etc.

**Works** Includes all construction and repairs in respect of physical assets (buildings, roads, etc.).