

# Part 11

## Procurement and Contract Rules

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# Part 11

## Procurement and Contract Rules

### SECTION A

### GENERAL

#### 1. Introduction

- 1.1 These Procurement and Contract Rules (the “Rules”) are the standing orders which apply to the acquisition of all supplies, services and works by or on behalf of the council. This includes where the council acts as lead commissioner on behalf of a third party using external funds.
- 1.2 These Rules apply to the whole lifecycle of the procurement process, from initial concept to the end of an asset’s useful life or the end of the contract liability period.
- 1.3 These Rules are divided into Sections A, B and C:
  - 1.3.1 Section A (“General”) sets out the Objects and Principles of these Rules;
  - 1.3.2 Section B (“Procurement Procedure”) sets out the rules for planning a Procurement and the procedure which must be followed for every Procurement up to signature of the relevant contract; and
  - 1.3.3 Section C (“Contract Maintenance, Monitoring and Administration”) sets out the rules for managing the relevant contract until termination or expiry together with other administration matters.
- 1.4 These Rules must be read in conjunction with the Procurement Manual which gives detailed instructions and assistance in their implementation. The Procurement Manual will be updated from time to time and officers must always refer to the latest version as published on the Intranet.
- 1.5 These Rules do not apply to:
  - 1.5.1 contracts of employment; or
  - 1.5.2 contracts that relate solely to the purchase or acquisition of land.
- 1.6 A list of the definitions used in these Rules is given at Appendix 1 attached to this Section A.

## **2. Objects**

- 2.1 These Rules have three objects:
  - 2.1.1 to deliver Best Value;
  - 2.1.2 to manage and reduce the council's corporate risk;
  - 2.1.3 to ensure accountability for all procurement decisions.

## **3. Principles**

- 3.1 All Procurements must comply with these Rules, the Procurement Manual, the Wiltshire Council Financial Regulations and Financial Procedure Rules, English law and European law in force in England.
- 3.2 Whether or not a Procurement is subject to the EU Regulations, it must be conducted in accordance with the basic EU Treaty Principles. In particular, this means all Procurements must be carried out in a fair, open and transparent way.
- 3.3 Any change to the relevant English or European law must be observed until these Rules are revised. If these Rules or the Procurement Manual conflict in any way with English law or European law in force in England then that legislation takes precedence.
- 3.4 The strategic advice of Legal Services and the Corporate Procurement Unit must be sought during the earliest stages of planning any Procurement. See further Section B of these Rules.
- 3.5 When any employee of either the council or of a service provider may be affected by any transfer arrangement under a Procurement or re-Procurement, issues relating to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) must be considered and the Wiltshire Pension Fund must be consulted at the planning stage of the Procurement. Recognised trades union consultation must be carried out in compliance with the Externalisation, Procurement and the Workforce Agreement published on the Intranet (or any document which replaces or supplements that agreement). See further the Procurement Manual.
- 3.6 All Procurements must comply with the Best Value processes set out in the Procurement Manual.
- 3.7 Each Service Director shall:
  - 3.7.1 be responsible for all Procurements undertaken within his or her service area;
  - 3.7.2 ensure that Best Value is achieved in all Procurements within his or her service area;
  - 3.7.3 ensure that:
    - 3.7.3.1 the strategic advice of Legal Services and the Corporate Procurement Unit is sought; and
    - 3.7.3.2 where appropriate, TUPE is considered and the Wiltshire Pension Fund consulted,during the earliest stages of planning any Procurement within his or her service area;

- 3.7.4 implement and operate a Scheme of Sub-delegation for his or her service area;
  - 3.7.5 in conjunction with the Corporate Procurement Unit and Legal Services, ensure that training on these Rules and the Procurement Manual is provided to Budget Managers and Commissioning Officers in accordance with the Procurement Manual;
  - 3.7.6 ensure that all Procurements within his or her service area are conducted in a fair, open and transparent way;
  - 3.7.7 ensure that Budget Managers in his or her service area comply with the duties listed at rule 3.8 below;
  - 3.7.8 ensure that Commissioning Officers in his or her service area comply with the duties listed at rule 3.9 below.
- 3.8 Each Budget Manager shall for all Procurements within his or her remit:
- 3.8.1 ensure compliance with these Rules, the Procurement Manual, the Wiltshire Council Financial Regulations and Financial Procedure Rules and EU Regulations (where applicable);
  - 3.8.2 ensure that the Best Value processes set out in these Rules and the Procurement Manual are achieved;
  - 3.8.3 ensure that only standard documentation or documentation approved by Legal Services is used in accordance with rule 8 below;
  - 3.8.4 operate within an effective check and challenge system and in line with the Behaviours Framework;
  - 3.8.5 ensure that the requirements to provide information and documentation for the Corporate Contract Register set out in these Rules are complied with.
- 3.9 Commissioning Officers must comply with these Rules and the Procurement Manual.
- 3.10 Key Performance Indicators will be used to monitor the operation of these Rules in accordance with the Procurement Manual. Results will be reported to Corporate Directors and Service Directors regularly.
- 3.11 A successful challenge made under the community right to challenge set out in Part 5 of the Localism Act 2011 will trigger the procurement processes set out in these Rules.
- 3.12 The council must comply with its obligations and duties in respect of State Aid in its commercial arrangements with third parties. The rules on State Aid are set out in the Procurement Manual.

## APPENDIX 1

### Definitions

In these Rules, the following words and phrases have the following meanings:

<b>Behaviours Framework</b>	The council's set of core behaviours which define how officers are expected to carry out their roles
<b>Best Value</b>	The optimum combination of whole life cost and benefits to meet the council's requirements, and includes consideration of social responsibility, equality, economic factors and sustainability
<b>Budget Manager</b>	An officer with budgetary responsibility for the spend relating to a Procurement
<b>Business Partner</b>	A business partner in the Corporate Procurement Unit
<b>Commissioning Officer</b>	An officer with responsibility for conducting any part of a Procurement
<b>Contract Management</b>	The administration of a completed contract by council officers to include ensuring compliance with its terms and conditions and implementation of any required variation
<b>Corporate Contracts Register</b>	The central repository of (i) key contracts information and (ii) electronic copies of those contracts, which is maintained and owned by the Corporate Procurement Unit and annually monitored by Legal Services
<b>Corporate Procurement and Commissioning Board</b>	A duly constituted board whose purpose is to check, challenge and approve Tender Level Procurements. The Corporate Procurement and Commissioning Board will act as an "approval gateway" to ensure that Tender Level Procurements are: (i) robust in approach, (ii) legally compliant, (ii) strategically sound and (iv) competitively sourced
<b>EU Regulations</b>	The Public Contracts Regulations 2006
<b>EU Threshold</b>	A financial threshold for supplies, services or works above which the EU Regulations apply, as set out in rule 7.4
<b>Exemption</b>	Has the meaning given in rule 16.3
<b>Extraordinary Exemption</b>	Has the meaning given in rule 16.4
<b>Financial Regulations</b>	The Financial Regulations set out in the council's constitution as updated from time to time, which provide financial controls around commitments including contracts

<b>Framework Agreement</b>	An agreement which allows the council to call-off from a supplier a range or pre-defined supplies or services. Each call-off constitutes a standalone contract made on the terms and conditions of the Framework Agreement
<b>Grant</b>	Has the meaning given in Protocol 8 (“Wiltshire Council Partnership Protocol”) of the constitution as updated from time to time
<b>Invitation to Tender (ITT)</b>	An invitation to tender documents in the form required by these Rules
<b>OJEU</b>	The Official Journal of the European Union
<b>Opportunity Assessment</b>	A detailed analysis of the route to Procurement and options for Procurement which is both legally compliant and offers Best Value, as set out in the Procurement Manual
<b>Partnership</b>	Has the meaning given in Protocol 8 (“Wiltshire Council Partnership Protocol”) of the constitution as updated from time to time
<b>Procurement</b>	The acquisition on behalf of the council of supplies, services or works of any value or type to include the entire process from initial planning to the end of the contract liability period or the end of an item’s useful life
<b>Procurement Manual</b>	The council’s Procurement Manual as updated by the Head of Procurement from time to time and published on the Intranet
<b>Procurement Plan</b>	The schedule demonstrating a minimum of 12 months’ forward planning of Tender Level Procurements for each service area, to be created and maintained in accordance with the Procurement Manual
<b>Purchase Order</b>	An order detailing the products or services required by the council. Sending a Purchase Order to a supplier constitutes a legal offer by the council to buy products or services. Acceptance of a Purchase Order by a supplier usually forms a one-off contract between the council and the supplier, so no contract exists until the Purchase Order is accepted
<b>Rules</b>	These Procurement and Contract Rules
<b>Scheme of Sub-delegation</b>	Delegation by corporate and service directors to officers in their service areas of the authority to exercise on their behalf powers delegated to them under Part 3B of the constitution as updated from time to time
<b>Tender</b>	A supplier’s formal written offer made in competition to supply specified supplies or services or carry out specified work at a stated cost or rate, made in response

	to an Invitation to Tender
<b>Tender Level Procurement</b>	Expenditure which exceeds the Tender threshold as defined in rule 7

# **SECTION B**

## **PROCUREMENT PROCEDURE**

### **4. Planning each Procurement**

- 4.1 Save where an Exemption or Extraordinary Exemption is granted under rule 16 below, every Tender Level Procurement must be planned in accordance with these Rules and the Procurement Manual.
- 4.2 The Procurement Plan is the schedule demonstrating a minimum of 12 months' forward planning of Tender Level Procurements for each service area, to be created and maintained in accordance with the Procurement Manual.
- 4.3 Each Service Director will be responsible for the Procurement Plan for his or her service area.
- 4.4 Each Budget Manager must ensure that his or her Tender Level Procurements are represented in the Procurement Plan as soon as reasonably practicable in order to ensure timely consideration of the Procurement procedure which must be followed.

### **5. Opportunity Assessment Phase for Tender Level Procurements**

- 5.1 Every Tender Level Procurement will be subject to an independent Opportunity Assessment carried out in accordance with these Rules and the Procurement Manual, unless exempted from this process by the Corporate Procurement and Commissioning Board.
- 5.2 Each Opportunity Assessment will be led by a Business Partner of the Corporate Procurement Unit. The Business Partner will work in collaboration with the relevant Commissioning Officer(s) during the Opportunity Assessment Phase and throughout the Procurement.
- 5.3 All Opportunity Assessments will be referred to the Corporate Procurement and Commissioning Board.
- 5.4 The Corporate Procurement and Commissioning Board will consider each Opportunity Assessment in order to check, challenge and approve Tender Level Procurements. Approval will be required from the Corporate Procurement and Commissioning Board before Tender Level Procurements can progress beyond the Opportunity Assessment phase.
- 5.5 All procurement related Cabinet Reports must be approved by the Corporate Procurement and Commissioning Board prior to submission.

### **6. Procurement Routes**

- 6.1 The procurement route to be taken is dependent on the estimated value of the supplies, services, or works to be provided. Full details of the processes and related information are given in the Procurement Manual. The table below summarises these.



- 6.2 The value of the contract is the total value of the contract over its full duration including any extensions. Where the contract term is indeterminate or indefinite the value will be 48 times the monthly cost. When estimating the total value of a contract over its term, including extensions, all elements of cost must be considered not just the invoice value to be paid for the supplies, services or works.

Threshold	Procurement Method	Details
Estimated Up to £500.00	Request for Quotation	A minimum of one written (auditable) quotation must be obtained.
Estimated £500.01 - £50,000.00	Request for Quotation	A minimum of 2 written (auditable) quotations must be requested for sums between £500.00 and £5,000.00 and a minimum of 3 written (auditable) quotations must be requested for sums between £5,000.01 and £50,000.00.
Estimated £50,000.01 – 100,000.00	Request for Quotation	A minimum of 4 written (auditable) quotations must be requested.
Estimated greater than £100,000.01	Tender	
EU Threshold currently: <ul style="list-style-type: none"> <li>£173,934 for Supplies and Services</li> <li>£4,348,350 for Works</li> </ul>	EU compliant Tender	For a total consideration in excess of relevant EU Threshold, EU Regulations must be complied with.
Not applicable	Existing Framework	Must ensure that the Framework is compliant with relevant regulations

### Aggregation

- 6.3 Where a single Procurement for works involves more than one contract, the value of all the contracts must be aggregated to decide whether a threshold has been reached.
- 6.4 For supplies and services the threshold value will be the aggregation of the estimated value of separate contracts for meeting a single requirement and where a series of contracts or a renewable contract is entered into for supplies/services of the same type during a twelve month period.

### Requests for Quotation

- 6.5 Full details of the process for each procurement route are given in the Procurement Manual

## **Single Quotation**

### Less than £500.00

- 6.6 A minimum of one written quotation must be sought from a suitable supplier. The quotation must specify:
- 6.6.1 the supplies, services or works to be supplied;
  - 6.6.2 when they are to be supplied;
  - 6.6.3 the value of the transaction;
  - 6.6.4 terms and conditions of contract which must comply with rule 8;
  - 6.6.5 terms of payment.
- 6.7 Although there is no requirement for competition, Best Value must be achieved.

## **Requests for Quotation**

### £500.01 to £50,000.00

- 6.8 For between £500.01 and £5,000.00 A minimum of two auditable written quotations must be sought from suitable suppliers. For between £5,000.01 and £50,000.00 a minimum of three auditable written quotations must be sought from suitable suppliers. Each quotation must specify:
- 6.8.1 the supplies, services or works to be supplied;
  - 6.8.2 when they are to be supplied;
  - 6.8.3 the value of the transaction;
  - 6.8.4 terms and conditions of contract which must comply with rule 8;
  - 6.8.5 terms of payment.
- 6.9 A date must be set for the submission of quotations. This date must allow sufficient time relevant to the complexity of the request for suppliers to respond.
- 6.10 The criteria for award must ensure that Best Value is achieved.

### £50,000.01 to £100,000.00

- 6.11 All Requests for Quotation ("RFQ") must use the defined RFQ process set out in the Procurement Manual. A minimum of four quotations must be sought from suitable suppliers. Written requests for quotation must use the appropriate template for the supplies, services or works to be requested.
- 6.12 A date must be set for the submission of quotations and stated in the RFQ. This date must allow sufficient time, relevant to the complexity of the request, for suppliers to respond.
- 6.13 Evaluation criteria must be stated within the RFQ. All responses must be evaluated in accordance with the published evaluation criteria contained in the RFQ template. The compliant response that scores the highest based upon the published criteria is to be accepted. Should the winning supplier wish to withdraw his quotation before contract completion, the next ranked supplier will be selected.

## Notice of Award

- 6.14 A “Notice of Award” must be advertised for all contracts whose value is above £100,000.01 in accordance with the Procurement Manual.

## 7. Tender Level Procurements

### Procurement above £100,000.01 but below the relevant EU Threshold

- 7.1 For Tender Level Procurements below the relevant EU Threshold the following minimum requirements must be met:
- 7.1.1 The tender must be advertised;
  - 7.1.2 A notice seeking expressions of interest must be placed via [www.buywiltshire.co.uk](http://www.buywiltshire.co.uk) and any other appropriate website or publication;
  - 7.1.3 The notice should specify a time limit of not less than 14 calendar days or 10 working days, whichever is the greater, within which interested parties must express their interest in tendering; and
  - 7.1.4 The award of the contract must be advertised via [www.buywiltshire.co.uk](http://www.buywiltshire.co.uk) and any other appropriate website.
- 7.2 All Invitations to Tender must contain as a minimum:
- 7.2.1 Written specification;
  - 7.2.2 Terms and conditions which must comply with rule 8;
  - 7.2.3 Award criteria;
  - 7.2.4 Tender submission instructions including closing date and time.

### Tender Level Procurement above the relevant EU Threshold

- 7.3 The EU Regulations apply to Tender Level Procurement above the relevant EU Threshold. Advice must be sought from the Head of Procurement or a nominated Business Partner prior to commencement of the Procurement.

### Eu Thresholds

- 7.4 An up to date list of the EU Thresholds is available in the Procurement Manual. At the time of publication of these Rules, the EU Thresholds are as follows:

<b>EU Classification</b>	<b>Total Contract Value</b>
Service Contracts	£173,934
Supplies Contracts	£173,934
Works Contracts	£4,348,350

- 7.5 Where a Procurement covers two types of contract the following classification guidance will be used:
- 7.5.1 Where a contract covers both services and supplies, the classification should be determined by whichever element has the greater value.
  - 7.5.2 Where it covers works and supplies, or works and services, it should be classified according to its predominant purpose.

7.5.3 Where a contract provides for the supply of equipment and an operator it should be regarded as a services contract.

7.5.4 Contracts for software are considered to be for supplies unless they have to be tailored to the purchaser's specification, in which case they are services.

### Prior Information Notices ("PINs")

7.6 Where Prior Information Notices are used to shorten the time limits for the receipt of tenders these must be in accordance with the EU Regulations.

### OJEU advertising timescales

Procedure	Text	Days
Open	Minimum time for <b>receipt of tenders</b> from date contract notice sent	52
	Reduced when PIN published, subject to restrictions to, generally, and no less than –	36 22
Restricted	Minimum time for receipt of <b>requests to participate</b> from the date contract notice sent	37
	Minimum time for <b>receipt of tenders</b> from the date invitation sent	40
	Reduced when PIN published (subject to restrictions) to, generally, and no less than –	36 22
Competitive dialogue and competitive negotiated	Minimum time for receipt of requests to participate from the date contract notice sent	37
	competitive negotiated accelerated	15

### Part A and Part B Services

7.7 All Procurements for services where the estimated total contract value exceeds the EU Thresholds are subject to the EU Regulations. The extent to which they are subject to the EU Regulations is determined by whether they are classified as Part A or Part B.

7.8 Part A services are subject to the full EU Regulations.

7.9 Part B services are excluded from certain aspects of the EU Regulations. Procurement of these services must comply with these Rules and those parts of the EU Regulations that apply. Details of those services that are classified as Part B can be found in Schedule 3 of the EU Regulations and the Procurement Manual.

### Concession Contracts

7.10 For public works concession contracts, subsidised works and subsidised service contracts connected to subsidised works (i.e. contracts under which the

contractor is given the right to exploit the works) the council may be obliged to ensure that the concessionaire complies with certain parts of the EU Regulations as if it were a public authority. Further advice is given in the Procurement Manual.

## **Utilities**

- 7.11 Procurement of utilities is covered by The Utilities Contract Regulations 2006. This includes postal services but excludes telecommunications. For further information on scope of the Utilities Contract Regulations 2006 please refer to the Procurement Manual.

## **8. Form of Contract and Tender Documentation**

- 8.1 All Procurements, regardless of value, must either:
- 8.1.1 use the council's appropriate unamended model contract available on the Intranet as updated from time to time; or
  - 8.1.2 be referred to Legal Services to review the proposed contract or produce a new contract as appropriate.
- 8.2 In addition to the requirements of rule 8.1 all Tender Level Procurements must either:
- 8.2.1 use the council's unamended standard tender templates which are available on the Intranet as updated from time to time; or
  - 8.2.2 be referred to the Corporate Procurement Unit to review the proposed tender documentation in conjunction with Legal Services.
- 8.3 Service Directors (or their nominees) shall in conjunction with Legal Services review all model contracts at least annually.
- 8.4 The Corporate Procurement Unit shall in conjunction with Legal Services review all standard tender templates at least annually.
- 8.5 The council's model contracts and standard tender templates will be updated from time to time and Commissioning Officers must always use the latest version as published on the Intranet.
- 8.6 The council's standard terms and conditions must be printed on the reverse of all Purchase Orders made by the council in accordance with the Procurement Manual.
- 8.7 Where there is an existing authorised contractual arrangement this must be used.

## **9. Framework Agreements**

- 9.1 A Framework Agreement is a formal tendered arrangement which sets out terms and conditions under which specific purchases can be made from the successful tenderer in unpredicted quantities at different times during the term of the Framework Agreement. A Framework Agreement can be used to procure supplies, services or works where the council does not know the precise quantity or timing of its requirement but has an ongoing need for such supplies, services or works.

- 9.2 Framework Agreements must comply with these Rules. This includes, but is not limited to, the following:
- 9.2.1 A Framework Agreement should be procured in accordance with the procurement routes set out in rules 6 and 7 above. The “value of the contract” in relation to a Framework Agreement is the estimated maximum value over its lifetime;
  - 9.2.2 A Framework Agreement must be loaded on the Corporate Contracts Register in accordance with rule 13, to include the estimated maximum value of the Framework Agreement over its lifetime.
- 9.3 In any case where a Framework Agreement is in place:
- 9.3.1 subsequent ‘call-offs’ from that Framework Agreement must not contain substantial amendments to the original terms of the Framework Agreement;
  - 9.3.2 orders to be placed against a known price do not require further competition unless required by law;
  - 9.3.3 in circumstances where the price was not specified under the Framework Agreement an order can only be placed if three quotes have been requested from the list of suppliers specified in the Framework Agreement or, if there are less than three suppliers specified, then all of them.
- 9.4 When advertising a Framework Agreement the advertisement must indicate:
- 9.4.1 that it is a Framework Agreement which is being tendered;
  - 9.4.2 the duration of the Framework Agreement (which must not exceed 4 years);
  - 9.4.3 the expected maximum number of suppliers;
  - 9.4.4 the estimated total value of the contracts to be covered by the Framework Agreement;
  - 9.4.5 the award criteria for choosing suppliers and subsequent criteria for placing orders.
- 9.5 Where a Commissioning Officer wishes to use a Framework Agreement offered by another public sector body, he or she must demonstrate that Best Value will be achieved. Costs of procurement should be included within this consideration.

## **10. Receiving And Opening Tenders**

- 10.1 All tenders must be received and opened in accordance with the council’s “Tender Receiving and Opening Procedures” These can be found in the Procurement Manual.

### **Standstill Period**

- 10.2 The standstill period is the period of time between the decision to award a contract and the signing of the contract. A standstill period must be undertaken

for all Tender Level Procurements and will not be limited to above EU Threshold or EU compliant tenders.

- 10.3 Once a decision to award a contract has been made, each tenderer and any candidate (i.e. those who withdrew or were rejected and were consequently not invited to tender) must be informed of the decision to award by sending a standstill notice in writing by using the most rapid means of communication practicable (e.g. fax, e-mail).
- 10.4 Where the standstill notice is sent to a tenderer, it must include:
- 10.4.1 the criteria for the award of the contract;
  - 10.4.2 the reasons for the decision including the characteristics and relative advantages of the successful tenderer;
  - 10.4.3 the score obtained by the tenderer receiving the notice;
  - 10.4.4 the score of the successful tenderer;
  - 10.4.5 the reasons (if any) why the tenderer did not meet the technical specification;
  - 10.4.6 the name of the successful tenderer; and
  - 10.4.7 a precise statement of either:
    - i. when the standstill period is expected to end; or
    - ii. the date before which the council will not enter into the contract.
- 10.5 Where the standstill notice is sent to a candidate, it must include:
- 10.5.1 the reasons why the candidate was unsuccessful; and
  - 10.5.2 all the same information that would be sent to tenderers except for "relative advantages of the successful tenderer".
- 10.6 Where the notice is sent by electronic means, there must be a minimum of 10 days between the receipt of the information and the end of the standstill period.
- 10.7 Where the notice is sent by non-electronic means, there must be a minimum of either 10 days from confirmed receipt, or 15 days from despatch of the notice.

### **Contract Award Notice**

- 10.8 All contracts awarded under EU Regulations (including both Part A and Part B services over the EU Thresholds) must be announced by means of a Contract Award Notice in OJEU transmitted no later than 48 calendar days after the date of award.
- 10.9 All contracts awarded following a tendering process, whether or not subject to the EU Regulations must be published via [www.buywiltshire.co.uk](http://www.buywiltshire.co.uk) and any other appropriate website.

## **11. Awarding Contracts and Audit Trails**

- 11.1 The results of the tender evaluation process must be recorded in writing by the Commissioning Officer responsible for leading the Procurement.

- 11.2 Any Commissioning Officer awarding a contract must ensure that the council has the funds available to meet all its financial obligations under the contract.
- 11.3 Commissioning Officers must be aware that the placing of any order constitutes a contractual commitment which must comply with these Rules.
- 11.4 Subject to rule 11.5 below, the authority to award contracts is delegated to Service Directors (and their nominees) in accordance with the Scheme of Delegation.
- 11.5 Cabinet approval must be obtained for any contract (or programme) which:
  - 11.5.1 exceeds an annual value of £1 million or the total contract value exceeds £4million including any optional extension period;
  - 11.5.2 involves the transfer of 50 or more employees in or out of the council; or
  - 11.5.3 relates to a matter which is commercially, politically or strategically sensitive.
- 11.6 Officers are referred to the contract storage and registration requirements of rule 13 below.

## **12. Contracts to be executed under Seal**

- 12.1 Where a contract either:
  - 12.1.1 exceeds £1m in value; or
  - 12.1.2 is considered to be of a strategically important or politically sensitive nature; or
  - 12.1.3 where the extended limitation period of 12 years would be of value,the contract must be executed under seal, unless advised otherwise by Legal Services.



# **SECTION C**

## **CONTRACT MAINTENANCE, MONITORING AND ADMINISTRATION**

### **13. General**

- 13.1 Budget Managers and Commissioning Officers shall observe the contract management, supplier management, vendor accreditation and registration processes set out in these Rules and the Procurement Manual.
- 13.2 It is the responsibility of Service Directors (or their nominees) to ensure the following:
- 13.2.1 On the day that the contract is awarded an electronic copy of the completed contract, keydates and key information must be loaded on to the Corporate Contracts Register in accordance with the Procurement Manual; and
  - 13.2.2 Value realisation data must be provided to the Corporate Procurement Unit and Finance in accordance with the Procurement Manual.
- 13.3 Commissioning Officers responsible for leading the Procurement must ensure that all signed original contracts are stored in accordance with the Procurement Manual.

### **14. Extensions to Contracts or Framework Agreements**

- 14.1 The duration of a contract or Framework Agreement may only be extended if provision for that extension has been included in the terms of the contract or Framework Agreement.
- 14.2 The duration of Tender Level Procurements awarded under the EU Regulations may only be extended if provision for that extension was identified in the original OJEU Notice.
- 14.3 An extension should not be made where it would have the effect of changing the fundamental nature of the original contract and in no circumstances should an extension be made to a contract that has the effect of increasing the contract to a value over the EU Thresholds in force at that time.
- 14.4 All extensions should be fully documented and the Corporate Contracts Register updated on the day of extension award in accordance with rule 13.
- 14.5 Where the value of an extension exceeds £100,000.01 written approval must be obtained following consideration of a written report. The report should be addressed to the Head of Procurement and will be considered by at least two of the following officers:
- 14.5.1 Head of Procurement (or nominee);
  - 14.5.2 Head of Supplier Relationship Management;
  - 14.5.3 Head of Legal Services (or nominee);

#### 14.5.4 Section 151 Officer.

- 14.6 An extension will only be granted if it can be demonstrated that this will achieve Best Value for the council and will not contravene any legal requirement.
- 14.7 Where extensions of contracts are entered into under an Exemption or Extraordinary Exemption and without an Opportunity Assessment, the Corporate Procurement Unit will only seek a temporary extension term in order to allow a full Opportunity Assessment to take place as soon as reasonably practicable. The avoidance of Opportunity Assessments will be exceptional.
- 14.8 When seeking an extension, the report to the Head of Procurement must address the following issues:
- 14.8.1 reasons for the extension and confirmation as to why re-tendering may not be appropriate at that precise moment;
  - 14.8.2 costs associated with any extension and comparable costs for any alternative options, if available, demonstrating how value for money is achieved;
  - 14.8.3 rationale for the duration of the extension;
  - 14.8.4 relevant market conditions;
  - 14.8.5 that the contract was initially won as a result of the competitive process;
  - 14.8.6 that the contractor is performing well; and
  - 14.8.7 that there are no significant deficiencies in the way the requirements of the existing contract are being met.
- 14.9 Cabinet approval must be obtained for any extension which:
- 14.9.1 exceeds an annual value of £1 million or the total contract including extensions exceeds £4 million
  - 14.9.2 relates to a contract whose subject matter is commercially, politically or strategically sensitive

## 15. Variations to Contracts

- 15.1 In any case where a variation means that the value of a contract would exceed the relevant EU Threshold, or where there is any material change to the contract, the contract must be treated as a new Procurement under these Rules. A material change is one which:
- 15.1.1 introduces conditions which would have made the contract more attractive to tenderers during the initial award procedure, would have allowed for the admission of alternative tenderers or would have allowed for the acceptance of a different tender;
  - 15.1.2 extends the scope of the contract to encompass services not initially covered; or
  - 15.1.3 changes the value of the contract significantly.

## 16. Exceptions to these Rules

- 16.1 These Rules apply to all supplies, services and works purchased by the council. However, subject to rule 16.2, a formal exemption to the requirements of one or more of these Rules may be considered where the Procurement in question is not subject to the EU Regulations or existing legislation.
- 16.2 Formal exemptions cannot be used to remove the requirement:
- 16.2.1 to use unamended model contracts and standard tender templates, or to seek the advice of Legal Services and the Corporate Procurement Unit where the standard documentation must be amended, in accordance with rule 8 above;
  - 16.2.2 to seek the advice of Legal Services and the Corporate Procurement Unit for all Tender Level Procurements.

### Exemptions

- 16.3 The Corporate Procurement Unit may grant formal exemptions which fulfil the following strict criteria ("Exemptions"):
- 16.3.1 Procurements which have been registered as Partnerships or Grants.
  - 16.3.2 Works orders placed with utility companies, e.g. for re-routing cables or pipework. The term utilities does not include telecommunications.
  - 16.3.3 Genuine emergencies – Critical preventative or remedial work where there is a real and imminent risk to the safety of people or property arising from a hitherto unforeseen 'catastrophic' event or incident such as fire, bombing, flooding, major landslide etc. Any contract entered into by the council under this exemption must not be for a term of more than 6 months.
  - 16.3.4 Collaborative/Joint Purchasing – Where another authority/public body is acting as 'lead buyer' and provided that the person(s) awarding the contract can demonstrate the arrangements comply with the requirements of Best Value and other applicable legislation including, where relevant, the EU Procurement Directives. This includes any recognised wider public sector agreements including, for example, Government Procurement Service (GPS) or successor contracts, etc.
  - 16.3.5 Sole source of supply - Where suitable supplies or service are genuinely only available from one supplier (e.g. if patent, copyright or other exclusive design rights exist). Similarly, for any highly specialised/niche services where, for all practical purposes, no realistic alternative source of supply exists. Exemption requests made on this basis will be tested by the Corporate Procurement Unit using sourcing tools.
  - 16.3.6 Urgent situations not of the council's own making – The urgency must have been reasonably unforeseeable (e.g. existing supplier going into liquidation, urgently imposed statutory changes, etc.) and genuinely be a case of 'time is of the essence'. However, urgency arising through problems of the council's own making

(whatever the cause and regardless of whether it involved previous delays or shortage of resources, etc.) shall not in itself justify exemption. Any contract entered into by the council under this exemption must not be for a term of more than 6 months. Where extensions of contracts are entered into without an Opportunity Assessment, the Corporate Procurement Unit will seek a temporary extension term in order to allow a full Opportunity Assessment to take place as soon as reasonably practicable. The avoidance of Opportunity Assessments will be exceptional.

16.3.7 Reasons of compatibility - If compatibility with existing supplies, equipment or services is essential and where they cannot be sourced from another supplier (e.g. spare parts/components for existing equipment) or where additional units are being purchased to match existing equipment and there is an overwhelming case for matching the existing items on the grounds of functionality, aesthetics, etc.

### **Extraordinary Exemptions**

- 16.4 Any Exemption which does not fulfil the strict criteria of rule 16.3 will be an “Extraordinary Exemption”.
- 16.5 Only the Head of Procurement in conjunction with the Solicitor to the Council (or nominee) may grant an Extraordinary Exemption.

### **Procedure for Exemptions and Extraordinary Exemptions**

- 16.6 Exemption requests made for one of the reasons under rule 16.3 must be submitted to a Business Partner in the Corporate Procurement Unit in the format annexed to this Section C at Appendix 2 (“Exemption Request Form”). Wherever possible, completed Exemption Request Forms should be scanned and submitted by email.
- 16.7 An Exemption will be either:
- 16.7.1 approved by the Corporate Procurement Unit, registered and confirmed with the requesting Commissioning Officer;
  - 16.7.2 held pending a request for further information (where appropriate);
  - 16.7.3 rejected stating the reasons why; or
  - 16.7.4 referred to Cabinet for determination.
- 16.8 Extraordinary Exemption requests must be submitted to the Head of Procurement in the format annexed to this Section C at Appendix 3 (“Extraordinary Exemption Request Form”). Extraordinary Exemption Request Forms must include a full business case and must be countersigned by the relevant Service Director. Wherever possible, completed Extraordinary Exemption Request Forms should be scanned and submitted by email.
- 16.9 An Extraordinary Exemption will be either:
- 16.9.1 approved by two of the following three designated officers:
    - 16.9.1.1 The Head of Procurement;

- 16.9.1.2 The Solicitor to the Council (or nominee); and
  - 16.9.1.3 The Section 151 Officer,  
and registered and confirmed with the requesting Commissioning Officer;
  - 16.9.2 held pending a request for further information (where appropriate) and then dealt with in accordance with rules 16.9.1, 16.9.3 or 16.9.4;
  - 16.9.3 rejected stating the reasons why; or
  - 16.9.4 referred to Cabinet for determination, and in the event of Cabinet approval, registered and confirmed in accordance with rule 16.9.1.
- 16.10 Within 10 working days of an Extraordinary Exemption approval made under rule 16, details of the approval decision and the attendant business case will be:
- 16.10.1 notified to the relevant Cabinet Member; and
  - 16.10.2 published on the Intranet,  
and the approval decision will normally be made available to the public, except where the notification of approval states that this would not be appropriate for legal reasons.
- 16.11 Service Directors must ensure that the information submitted in all Exemption Request Forms and Extraordinary Exemption Request Forms for his or her service area is correct.
- 16.12 The Procurement may proceed only after the notification of approval is received by the Commissioning Officer.
- 16.13 All Exemption requests which would contravene English law or European law in force in England will be rejected.
- 16.14 If the Exemption is approved, the application form will be endorsed and returned to the relevant Commissioning Officer who must enter the contract on to the Corporate Contracts Register in accordance with rule 13. A copy of the Exemption will be retained by the Corporate Procurement Unit.

## **17. Partnerships and Grants**

- 17.1 These Rules shall apply to:
- 17.1.1 Grants to the extent required by the Wiltshire Compact. Grant expenditure should be managed in accordance with these Rules with the exception of central government grant funding ringfenced for a specific use; and
  - 17.1.2 Partnerships to the extent required by this Rule 17 and Protocol 8 of this constitution.
- 17.2 Service Directors must ensure that Grants and Partnerships demonstrate the principles of being fair open and transparent and comply with the spirit of these Rules and comply with all relevant legislation.

- 17.3 In the case of a Partnership registered in accordance with the council's guidance on Partnerships, these Rules shall apply in full to the extent that any contractual relationship arises during the course of the Partnership.

## **18. Procurement and Commissioning Governance**

- 18.1 The Corporate Procurement and Commissioning Board will regularly review procurement and commissioning governance and recommend changes which enhance performance and added value activities.
- 18.2 The general powers of the Corporate Procurement and Commissioning Board are:
- 18.2.1 To plan Tender Level Procurement;
  - 18.2.2 To approve Tender Level Procurement spend at the Opportunity Assessment phase;
  - 18.2.3 To monitor the value added by the check and challenge system.
- 18.3 The reporting relationships between service areas, the Corporate Procurement and Commissioning Board, the Corporate Procurement Unit, Corporate Finance and Legal Services are set out in the Procurement Manual.

**APPENDIX 2**  
**Request for Exemption Form**

<u><b>Registration of Exemption</b></u>		
<b>To:</b>	<b>Business Partner, Corporate Procurement Unit</b>	
<b>From:</b> <i>(Name of Officer registering this exemption)</i>		
<b>Name of contract:</b> <i>(to be exempted from the recognised procurement routes within the Procurement and Contract Rules)</i>		
<b>Purpose of Contract</b>		
<b>Proposed Contract period:</b>	<b>From:</b>	<b>To:</b>
<b>Total Contract Value £</b>		
<b>Category of Exemption</b>	<b>Tick Relevant Categories</b>	
Procurements registered as Partnerships or Grants		
Works orders placed with utility companies		
Genuine Emergencies		
Collaborative/Joint Purchasing <i>(state name of lead purchasing authority)</i>		
Sole source of supply		
Urgency not of the council's own making		
Reasons of compatibility		
<b>Please Attach supporting evidence</b>		
In accordance with the Procurement and Contract Rules I certify that the information given is accurate		
Signed:		
Date:		
Please send the completed Registration of Exemption form for inclusion to the Procurement and Contract Rules Exclusion Register to the Head of Procurement		

**APPENDIX 3**  
**Request for Extraordinary Exemption Form**

<u><b>Registration of Extraordinary Exemption</b></u>		
<b>To:</b>	<b>Head of Procurement</b>	
<b>From:</b> <i>(Name of Officer registering this exemption)</i>		
<b>Description of contract:</b> <i>(attach supporting documentation if applicable)</i>		
<b>Proposed Supplier Contract(s):</b>		
<b>Proposed Contract period:</b>	<b>From:</b>	<b>To:</b>
<b>Total Contract Value £</b>		
<b>Name of Corporate Procurement Officer contacted for advice on this exemption</b>		
1. When did the requirement for this contract arise:		
2. Why is this request to exclude the application of the council's Procurement and Contract Rules to the process of awarding this contract being made and what is the business case to support this request? Please provide all relevant detail		
3. How will costs be controlled and how will value for money be achieved?		
Has cabinet approval been obtained for entering into this contract without complying with the council's Procurement and Contract Rules?		
<b>PLEASE ATTACH ANY RELEVANT SUPPORTING INFORMATION</b>		
Signed: <i>(This form must be signed by the relevant Service Director)</i>		
Authorised:	Yes	No
Authorised by:	1.	2.
Reasons for Refusal:		