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# Stroud District Council

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## Contract and Procurement Procedure Rules

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## **SECTION 1: General Compliance and Scope**

### **1. Compliance**

- 1.1. Every contract entered into by the Council shall be entered into pursuant to or in connection with the Council's functions and shall comply with:
  - 1.1.1. All relevant legislation, statutory guidance and codes e.g. Local Government Transparency Code;
  - 1.1.2. The relevant European procurement rules when applicable and whilst they have a direct effect in the UK (i.e. the EC Treaty, the general principles of EC law and the EC public procurement directives implemented by the UK Regulations);
  - 1.1.3. The Council's Constitution including these Contract and Procurement Procedure Rules, the Council's Financial Regulations and Scheme of Delegation;
  - 1.1.4. The Council's strategic objectives, Procurement Strategy, and relevant policies.
- 1.2. The policy of the Council, and the objective of these Contract and Procurement Procedure Rules, is to ensure that all works, supplies and services:
  - 1.2.1. Are obtained with probity and propriety to ensure the proper expenditure of public funds;
  - 1.2.2. Are appropriate for the purpose for which they are obtained;
  - 1.2.3. Ensure Best Value for Money.

### **2. Scope**

- 2.1. These Contract and Procurement Procedure Rules apply to any arrangement made by, or on behalf of, the Council for the carrying out of works, the provision of services or the supply of supplies
- 2.2. These Contract and Procurement Procedure Rules do not apply to:
  - 2.2.1. contracts of employment which make an individual a direct employee of the Council;
  - 2.2.2. the acquisition, disposal, or transfer of land (which must only be carried out by officers with delegated authority) except where services or works are required by the Council as part of the land transaction e.g. development agreements;
  - 2.2.3. contracts relating to the placement of deposits or raising of loans under the treasury management strategy;
  - 2.2.4. purchases made at public auction; and
  - 2.2.5. the giving of grants

## **SECTION 2: Common Requirements**

### **3. Calculation of Contract Values**

- 3.1. Unless otherwise stated, the calculation of the estimated value of a procurement shall be based on the total amount payable in pounds sterling, inclusive of VAT, as estimated by the Council over the entire contract period, including any proposed extension to the initial contract period
- 3.2. The estimated value is to be calculated as at the date the contract is first advertised or the Bidders are contacted, whichever occurs first.

- 3.3. Contracts should be for a fixed term, but where this is not possible (e.g. hire agreements) the contract value should be calculated by multiplying the monthly value by 48.
- 3.4. Contracts must not be artificially under or over-estimated or divided into two or more separate contracts where the effect is to avoid the application of these Contract and Procurement Procedure Rules or the Regulations.

#### **4. Authorised Officers and their Responsibilities**

- 4.1. Authorised Officers are persons responsible for carrying out the procurement in question and who have received corporate training on these Contract and Procurement Procedure Rules and the Regulations.
- 4.2. The Authorised Officer must proceed with the procurement in a manner commensurate with its complexity and value, by:
  - 4.2.1. appraising the need for the expenditure and its priority;
  - 4.2.2. defining the objectives of the procurement;
  - 4.2.3. assessing the risks associated with the procurement and how to manage them;
  - 4.2.4. considering what procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing, partnering, packaging strategy and collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium and frameworks;
  - 4.2.5. consulting users as appropriate about the proposed procurement method, contract standards and performance and user satisfaction monitoring;
  - 4.2.6. Checking to see if a corporate contract already exists e.g. stationery contract.
  - 4.2.7. Where the procurement involves a potential change to services provided by the Council the Authorised Officer ensuring compliance with:
    - the Council 's duty to consult under Section 3 Local Government Act 1999
    - the Council 's duties under the Equality Act 2010.
    - The Public Social Value Act 2012 for contracts for services over the Threshold to ensure how the procurement might improve the economic, social and environmental well-being of the geographical area the Council serves.
  - 4.2.8. Ensuring the Budget Holder has sufficient budget to sustain the contract for the life of the contract.
  - 4.2.9. for Quotes with a value of £30,000 or less attaching the relevant standard terms and conditions to the purchase order or otherwise draw the attention of the Supplier to these standard terms and conditions;
  - 4.2.10. for Tenders with a value above £30,000, instructing the Director: One Legal in writing to draft or approve the formal written contract terms and conditions that are to apply to the proposed contract;
  - 4.2.11. ensuring that a purchase order is raised for the contract.
- 4.3. Where any procurement may result in any employee either of the Council or of a service provider being affected by any transfer arrangements, Authorised Officers must ensure that the application of the Transfer of Undertaking Protection of Employment Regulations 2006 (TUPE) is considered and obtain legal advice before proceeding with inviting Tenders or Quotes.

4.4. Any procurement that is:

- over the Threshold and TUPE applies or
- is over budget and no further budget has been identified by the S151 Officer

shall be referred to the relevant Committee or Council for decision, unless otherwise stated elsewhere in the Council's constitution.

**5. Contract Values**

5.1. Where the total value for a procurement is within the values in the first column below, unless the Budget holder procures via a compliant Framework Agreement, Draw Down Agreement or Dynamic Purchasing System, the award procedure in the second column must be followed:

| <b>Estimated Total Contract Value</b>                   | <b>Contract Letting Requirements &amp; Forms of Contract</b>   |
|---|--|
| <p>£12,000<br/>(including VAT)<br/>and below</p>        | <p>The Budget Holder can purchase from the source that offers the Best Value for Money to the Council.</p> <p>This could be demonstrated by obtaining of 2 written Quotes, where this is possible. It is recommended that suppliers or contractors are approached by telephone or e-mail and prices obtained in writing. This can also be demonstrated by comparing prices on websites or catalogues.</p> <p><b>Contracts shall be by purchase order with the relevant standard terms and conditions attached or otherwise drawn to the attention of the Supplier.</b></p>   |
| <p>£12,000 to<br/>£30,000<br/>(including VAT)</p>       | <p><b>At least 3 written Quotes shall be sought through the Portal using Quick Quotes.</b></p> <p>Contracts with a value of £30,000 or less shall be by purchase order with the relevant standard terms and conditions attached or otherwise drawn to the attention of the Supplier.</p> <p>If the lowest Quote received exceeds £30,000, the contract shall not be awarded unless the contract is below the relevant Threshold and either</p> <ul style="list-style-type: none"> <li>• an exemption is approved in accordance with Rule 6.1 or</li> <li>• approval is given by the Section 151 Officer.</li> </ul> <p>Unless an exemption or approval of the Section 151 Officer is given, a new procurement will be required which must be carried out in accordance with the Threshold below.</p> |
| <p>Above £30,000 to<br/>£90,000<br/>(including VAT)</p> | <p>At least 3 written Quotes shall be sought through the Portal using the Request for Quote template</p> <p>Where a procurement opportunity with a value estimated to be £30,000 or above is Advertised, it must also be advertised on Contract Finder using the Portal (within 24 hours of any other adverts appearing) together with unrestricted and full direct internet access to relevant contract documents.</p>  |

|                                   |   |
|-----------------------------------|---|
|                                   | <p>A pre-qualification stage is not permitted but appropriate suitability questions may be asked in the Request for Quote.</p> <p>A formal written contract prepared or approved by the Director: One Legal must be used.</p>   |
| <p>Above £90,000 to Threshold</p> | <p>A full competitive procurement shall be undertaken through the Council's Portal using an Invitation to Tender.</p> <p>The opportunity must be advertised on Contract Finder (within 24 hours of any other adverts appearing) together with unrestricted and full direct internet access to relevant contract documents.</p> <p>A pre-qualification stage is not permitted except for procurements of works contracts above the Threshold for supplies and services. A PAS91 pre-qualification questionnaire must be used.</p> <p>A formal written contract prepared or approved by the Director: One Legal must be used.</p> <p>If the lowest Tender received exceeds the relevant Threshold then the contract shall not be awarded. A new procurement will be required which must be carried out in accordance with the Threshold and Above procedure below.</p> <p>Where a works contract to be tendered has a total estimated value within 10% of the relevant threshold, the procedure described below should be followed. Where a supplies or services contract to be tendered has a total estimated value within 5% of the relevant threshold, the procedure described below should be followed.</p> |
| <p>Threshold and Above</p>        | <p>A full competitive procurement shall be undertaken through the Portal using an Invitation to Tender.</p> <p>A formal written contract prepared or approved by the Director: One Legal must be used.</p> <p>Procurement opportunities shall be advertised</p> <ul style="list-style-type: none"> <li>• Council's Procurement Portal</li> <li>• on the Find a Tender Service website</li> <li>• on Contract Finder within the time limit specified in the Regulations.</li> </ul> <p>The Senior Policy and Governance Officer in consultation with the Director: One Legal shall advise on the most appropriate procurement procedure to be used when conducting a procurement. The Regulations set out the permitted procurement procedures; the two most common procedures are:</p> <ul style="list-style-type: none"> <li>• <b>Open Procedure</b> – a one stage process where anyone can submit a tender</li> <li>• <b>Restricted Procedure</b> – a two stage process where a Selection Questionnaire is used to shortlist Bidders who are then invited to submit a tender.</li> </ul>  |

|                           |   |
|---------------------------|---|
|                           | <p>The following procedures can only be used in certain circumstances following advice from the Senior Policy and Governance Officer or Director: One Legal.</p> <ul style="list-style-type: none"> <li>• <b>Innovation Partnership;</b> This may be used when the Council is seeking innovative ideas where solutions are not already available on the market and there is also an intention to include both the development of the outcome and its subsequent purchase (subject to meeting agreed performance levels and maximum costs) in the procurement.<br/><br/>A structured partnership will be established for the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the agreed performance levels and costs.</li> <li>• <b>Competitive dialogue</b><br/><br/>This can be used where either of the following apply: <ul style="list-style-type: none"> <li>i. the need of the Council cannot be met without adaptation of readily available solutions;</li> <li>ii. they include design or innovative solutions;</li> <li>iii. specific circumstances related to the nature, the complexity or the legal and financial makeup or because of risks attaching to them;</li> <li>iv. the technical specifications cannot be established with sufficient precision with reference to a standard, European Technical Assessment, common technical specification or technical reference;</li> <li>v. where, in response to an open or a restricted procedure, only irregular or unacceptable tenders were submitted, provided that the Council includes in the procedure all of, and only, the Bidders that meet certain criteria and submitted tenders in accordance with the formal requirements of the failed procedure</li> </ul> </li> <li>• <b>Competitive Procedure with negotiation.</b><br/><br/>This procedure can be used for the same reasons as competitive dialogue. With this procedure, the Council can negotiate with Bidders who have submitted tenders to seek improved offers.<br/><br/>A formal written contract prepared or approved by One Legal must be used.</li> </ul> |
| <p>Light Touch Regime</p> | <p>Contracts involving the following supplies and services are subject to a 'light touch' regime if the value of the contract is below the prescribed Threshold;</p> <ul style="list-style-type: none"> <li>• Health, social and related services</li> <li>• Administrative social, educational, healthcare and cultural services</li> <li>• Compulsory social security services</li> <li>• Benefit services</li> </ul>   |





## **6. Exemptions**

- 6.1. Subject to the written approvals referred to in Contract Rule 6.2 below, exemptions of any of these Contract and Procurement Procedure Rules shall only be given in the following exceptional circumstances:-
- 6.1.1. Where the supplies, works or services are of a unique or specialised nature or are identical or similar to or compatible with an existing provision so as to render only one or two sources of supply appropriate, including:
- an upgrade or
  - where the contract concerns, wholly or mainly, repairs to or the supply of parts for existing proprietary machinery, plant or equipment and the repairs to or the supply of parts cannot be carried out practicably by alternative Suppliers; or
- 6.1.2. The supplies to be purchased are proprietary articles or are sold only at fixed prices; or
- 6.1.3. The price of services, or supplies to be purchased is controlled by trade organisations, or if for other reasons there would be no genuine competition; or
- 6.1.4. Where in the opinion of the Authorised Officer in consultation with the Section 151 Officer and the Director: One Legal considers that the services to be provided or the work to be executed or the supplies or materials to be purchased are urgent; or
- 6.1.5. Specialist consultants, solicitor, barrister, agents, artist or professional advisers are required and:
- There is no satisfactory alternative; or
  - Evidence indicates that there is likely to be no genuine competition; or
  - It is, in the opinion of the Authorised Officer, in the Council 's best interest to engage a particular consultant, solicitor, barrister, agent, artist or adviser;
- or
- 6.1.6. Where the Council is purchasing a property, or is taking a service back in-house, which has associated contracts and in the opinion of the Authorised Officer it is in the Council's best interests to take on those contracts; or
- 6.1.7. The works to be executed or the supplies or materials to be purchased can only be carried out or supplied by a statutory body.
- 6.2. These Contract and Procurement Procedure Rules cannot be exempted for the procurements above the relevant Threshold.
- 6.3. Where it is possible to exempt these Contract and Procurement Procedure Rules, any such exemptions must be agreed by:
- 6.3.1. Committee for contracts above £250,000 or the Chief Executive in consultation with the Leader of the Council, the Section 151 Officer and the Director: One Legal if the matter requires an urgent decision and a meeting of the Committee cannot be called; or
- 6.3.2. The Budget Holder (if authority to do so has been delegated to them), the Chief Executive or a Strategic Director, in consultation with the Section 151 Officer and the Director: One Legal if the contract does not exceed £250,000.

- 6.4. A record of the decision and the reasons for it shall be kept and the exemption itself shall be kept by the Senior Policy and Governance Officer.

### **SECTION 3: Tendering and Quotation Process**

#### **7. Advertising (above £30,000)**

- 7.1. Adverts shall include as a minimum:

- Date and time response to be received by the Council
- How and to whom the Supplier must respond and
- Any requirements for participating in the procurement
- Specification.

- 7.2. Where adverts are placed on, Contract Finder unrestricted and full direct internet access to relevant contract documents shall be available on the Council's Portal free of charge when to the advert is placed.

- 7.3. Opportunities with a value over the relevant Threshold must also be advertised on Find a Tender Service.

#### **8. Suitability Assessment (under Threshold) and Pre-Qualification (above Threshold only)**

- 8.1. Authorised Officers are responsible for ensuring that all Bidders for a contract are suitably assessed. Financial and due diligence checks must be undertaken for all contracts where the value of the contract is above £150,000.

##### **Under Threshold**

- 8.2. As part of the tender or quotation process the Authorised Officer shall establish that the potential Bidders meet minimum requirements or minimum standards of:

- Suitability.
- Capability.
- Legal status; and
- Financial standing.

- 8.3. The assessment questions must be:

- relevant to the subject matter of the procurement and
- proportionate.

- 8.4. For works and work-related contracts above the Threshold for supplies and services) a pre-qualification stage is permitted. Officers must use form PAS91 or such other template required by Law or by the Government.

##### **Above Threshold**

- 8.5. Procurements above the Threshold can use a pre-qualification stage. Officers must use the Selection Questionnaire form issued by the Government or form PAS91 or such other templates as required by law or by the Government.

- 8.6. As any deviations the standard form must be reported to the Cabinet Office changes to the form are not permitted without the consent of the Senior Policy and Governance Officer, Section 151 Officer, Monitoring Officer and the Director: One Legal.

8.7. Any Bidder eliminated from a procurement where a pre-qualification process has been undertaken must be notified following the evaluation of that stage in the process.

## **9. Electronic Tendering**

9.1. On 18th October 2018, electronic procurement and electronic communications became compulsory for above Threshold procurements. Except in the limited circumstances contained in the Regulations, all communication and information exchange, including electronic submission of tenders, shall be performed using electronic means of communication in accordance with the requirements of the Regulations.

9.2. Except for procurements with a value of £12,000 or below, the procurement shall be carried out through the Portal unless otherwise permitted by these Contract and Procurement Procedure Rules and the Section 151 Officer.

9.3. The procurement may, following consultation with the Senior Policy and Governance Officer and the Director: One Legal, be carried out through an electronic auction where the Authorised Officer is satisfied that it is in the interests of the Council to do so.

## **10. Dividing Tenders into Lots**

10.1. Authorised Officers may decide to award a contract in the form of separate lots and may determine the size and subject matter of such lots.

10.2. For an above Threshold procurement, if the contract is not split into lots the main reasons for this decision shall be included in the procurement documents and the Regulation 84 Report.

10.3. Authorised Officers shall include in the notice and or tender documents whether:

- tenders can be submitted for one, for several or for all of the lots;
- if there is a limit on the numbers of lots that can be tendered for.

10.4. Where more than one lot may be awarded to the same Bidder, Awarding Officers may award contracts combining several or all lots where they have specified in the contract notice or in the invitation to tender that they reserve the possibility of doing so and indicate the lots or groups of lots that may be combined.

## **11. Invitation to Tender**

11.1. The Invitation To Tender shall state that no Tender will be considered unless it is received by the date and time stipulated in the Invitation To Tender. Subject to Contract and Procurement Procedure Rule 11.3 below, no Tender delivered in contravention of this Contract and Procurement Procedure Rule shall be considered.

11.2. All Invitations to Tender shall be in accordance with the Contract and Procurement Procedure rules and policies.

11.3. No Tenders received after the specified date and time for receipt of Tenders shall be accepted or considered by the Council unless the Authorised Officer, after consulting the Senior Policy and Governance Officer, s151 Officer and the Director: One Legal, is satisfied that there is sufficient evidence for the Tender having been despatched in sufficient time for it to have arrived before the closing date and time.

## **12. Submission and Opening of Tenders and Quotes**

12.1. Tenders and Quotes shall be submitted in accordance with requirements set out in the Invitation to Tender or Request for Quote.

No Tenders or Quotes received after the specified date and time for receipt shall be accepted or considered by the Council unless the Authorised Officer, after consulting

with the Senior Policy and Governance Officer, the Section 151 Officer and the Council Solicitor, is satisfied that there is sufficient evidence that either;

- The Tender or Quote was despatched in sufficient time for it to have arrived before the closing date and time
- Technical difficulties with the e-tendering system prevented the Tender or Quote from being submitted before the closing date and time.

### **Quotations (under £90,000)**

#### **Electronic Quotation submissions**

- 12.2. Where Quotations are received through the Council's e-tendering system, the e-tendering system will automatically record the time and date the Quotations were received. All Quotations will be retained and remain unopened in the secure system until the requisite deadline for opening.
- 12.3. All Quotations will be opened by the Authorised Officer using the Council's e-tendering system. This system will formally record the date and time for audit purposes.
- 12.4. Once the Quotations have been opened, they will be stored securely in the electronic portal.
- 12.5. The successful Supplier shall be asked to provide an original signed paper copy of the quotation submission for inclusion in the contract documents.

### **Tenders (£90,000 and above)**

#### **Electronic tender submissions**

- 12.6. Where Tenders are received through the Council's Portal, the e-tendering system will automatically record the time and date the Tenders were received. All Tenders will be retained and remain unopened in the secure system until the requisite deadline for opening.
- 12.7. All Tenders will be opened by the Authorised Officer using the Council's e-tendering system. This system will formally record the date and time of opening for audit purposes.
- 12.8. Once the tenders have been opened, they will be stored securely in the electronic portal.
- 12.9. The successful Supplier shall be asked to provide an original signed paper copy of the tender submission for inclusion in the contract documents.

### **13. Arithmetical Errors, Post Tender Clarification and Abnormally Low Tenders**

- 13.1. Bidders can only alter their Tenders or Quotes after the date specified for their receipt (but before the formal acceptance of the Tender or Quote), where examination by the Authorised Officer reveals arithmetical errors or discrepancies which affect the Tender or Quote figure. The Bidder shall be given details in writing of such errors or discrepancies and afforded an opportunity of confirming, amending or withdrawing their offer in writing.
- 13.2. In an above threshold procurement, the Council must require Bidders to explain the price of costs proposed in the tender where the tender appears to be abnormally low in relation to the works, supplies or services.
- 13.3. All post-tender clarifications shall:
  - only be undertaken following consultation with the Senior Policy and Governance Officer and the Director: One Legal; and
  - not disclose commercially sensitive information supplied by other Bidders.

13.4. The Council does not accept qualified or conditional quotes/tenders. Where a Bidder has submitted a qualified or conditional quotation/tender Authorised Officers, in consultation with the Senior Policy and Governance Officer, must give Bidders the opportunity to withdraw the qualification or condition without amendment to the bid submitted.

## **14. Evaluation**

14.1. Tenders and Quotes shall be evaluated in accordance with the Regulations (where applicable) and the award criteria set out in the Invitation to Tender or Request for Quote.

14.2. All contracts shall be awarded based on the offer which represents the most economically advantageous, taking into account price and/or quality, to the Council.

14.3. The award criteria shall be predetermined and listed in the Invitation to Tender or Request for Quote documentation. In addition, the criteria shall be strictly observed at all times throughout the contract award procedure by any officer involved in the tender evaluation.

14.4. For all contracts regardless of value, no person with a personal or financial interest in any of the Suppliers submitting a proposal should be involved in any way in influencing the decision as to which Supplier is to be awarded the contract. A declaration of interest form must be completed by each officer involved in the evaluation process and held on file by the Authorised Officer.

14.5. Where Authorised Officers intend to carry out site visits presentations or interviews as part of the evaluation process, this must be made clear in the invitation to tender and include whether this will be scored separately to the tender submission or used to moderate scores. If scored separately, Bidders must be informed of the evaluation criteria and weighting in the procurement documents.

## **15. Awarding Contracts**

15.1. The Council shall only accept a tender and award a contract to the Bidder submitting the Most Economically Advantageous Tender/Quote.

15.2. Depending on what is being procured and whether or not it is an above Threshold procurement, the Most Economically Advantageous Tender/Quote can be assessed as follows;

- Price (i.e. the lowest bid)
- Cost (where the assessment is based on cost-effectiveness basis such as an asset life-cycle assessment (cost of the asset, maintenance costs, end of life costs)
- Best Price/Quality Ratio (the award criteria can include quality, including technical merit, aesthetic and functional characteristics, delivery date, delivery process, after-sales service and technical assistance as well as environmental and/or social matters and any other matters relevant to what is being procured.

The award criteria and the scoring methods must be disclosed in the Invitation to Tender or Request for Quote.

15.3. A contract may only be awarded by an Awarding Officer with the requisite delegated authority to award contracts. Prior to award, the Authorised Officer should ensure that the Budget Holder responsible for the contract has sufficient funds in place to sustain the contract.

15.4. For contracts with a value of £30,000 or above, regardless of where the contract award opportunity was advertised, a contract award notice containing the name of the Supplier,

the date the contract was entered into and the value of the contract must be published on Contract Finder no later than 90 days after contract award. If below Threshold the award notice must state whether or not Supplier is a Small and Medium-sized Enterprise (SME) or voluntary, community and social enterprise (VCSE).

15.5. For above Threshold procurements, a Contract Award Notice must be published in Find a Tender Service and Contract Finder as required by Law or the Government and the relevant standstill period observed. The contract shall not be completed or Purchase Order issued unless the standstill period passes with no challenges. The Authorised Officer shall notify the Senior Policy and Governance Officer, Monitoring Officer and the Director: One Legal immediately following receipt of a challenge.

## **16. Debriefing**

16.1. The Authorised Officer shall provide a written debriefing to unsuccessful Bidders as required by the law.

## **SECTION 4: Contract Formalities**

### **17. Execution of Contracts**

17.1. All contracts not exceeding £30,000 that require execution, shall be signed by the, Strategic Director, or any other officer with delegated authority to do so unless the Director: One Legal requires that the contract be sealed.

17.2. All contracts with a value exceeding £30,000 but not exceeding £90,000 shall be signed by the Strategic Director or Head of Service unless the Director: One Legal requires that the contract be sealed.

17.3. All contracts exceeding £90,000 shall be executed as a deed by the Director: One Legal or some other person authorised by the Director: One Legal and the common seal affixed to the contract unless the Director: One Legal considers it more expedient to sign the contract.

17.4. Electronic signatures may only be permitted as a method of executing contracts with the prior consent of the Monitoring Officer having first obtained advice from One Legal.

### **18. Records of Quotes, Tenders and Contracts**

18.1. For all procurement the Authorised Officer is responsible for keeping records of Tenders and Quotes received in such form as required by the Senior Policy and Governance Officer.

18.2. Authorised Officers must ensure that details of contracts over £6,000 are entered in the Contracts Register kept by the Council and maintained by the Senior Policy and Governance Officer.

18.3. All contracts with a value of £30,000 and above shall be kept by the Senior Policy and Governance Officer and an electronic copy retained by the Director: One Legal. All contracts below that value shall be kept securely by the Budget Holder in accordance with the Council's retention policy.

### **19. Bonds and Parent Company Guarantees**

19.1. A Bond or Parent Company Guarantee will be required on all works contracts above £1,000,000 unless considered inappropriate by the Section 151 Officer following consultation with the Director: One Legal.

19.2. Bonds or Parent Company Guarantee may be required for any contract if considered appropriate by the relevant Strategic Director or Section 151 Officer following consultation with the Strategic Director: One Legal.

19.3. Bonds shall be a minimum of 10% of the contract value.

## **20. Embedded Leases and Embedded Derivatives**

20.1. Prior to the award of a contract the Authorised Officer must notify the Section 151 officer where under the contract:

- the Council will have use or control of or will be paying for the use of a specific asset or group of assets; or
- contains a clause that caps the price the Council has to pay for supplies or services or there is a floor price on the price the Council has to pay for supplies or services; or
- the prices the Council has to pay under the contract, increase by more than 2 times RPI; or
- the prices the Council has to pay, increase by some other form of Indices or commodity price.

## **SECTION 5: Specific Types of Tendering**

### **21. Framework Agreements and Dynamic Purchasing Systems**

#### **Framework Agreements and Dynamic Purchasing Systems set up by Other Contracting Authorities**

21.1. External Framework Agreements and Dynamic Purchasing Systems (DPS), where the Council is named or identified as part of a class of permitted users, can be used where the Council wishes to contract for the sourcing of supplies, services or works without conducting a full procurement exercise.

21.2. The Framework Agreement and DPS may include within its terms a requirement for an abbreviated competitive exercise (“mini competition”) between some or all of those Suppliers who are parties to the Framework Agreements and can provide the supplies, services or works being tendered. Other Framework Agreements may allow for a direct award or the choice of either direct award or mini completion. Any purchase from a Framework Agreement or DPS shall be made in accordance with the procedure set out in the Framework Agreement.

21.3. The approval of the Senior Policy and Governance Officer or Director: One Legal shall be sought before signing up to a new Framework Agreement or DPS.

21.4. A Call-Off contract as set out in the Framework Agreement or DPS will need to be entered into. If no pre agreed contract is provided for in the Framework Agreement or DPS, a contract drafted or approved by the Director: One Legal, shall be entered into.

#### **Framework Agreements and Dynamic Purchasing Systems set up by the Council**

21.5. The Council may carry out procurement exercises to set up Framework Agreements or a DPS to allow it to choose Suppliers who meet its pre-qualification requirements. The Council can then Call-Off Suppliers from the Framework Agreement or the DPS. This could be useful where the Council has need to call on contracts urgently or often. The Council could also set up a Framework Agreement or DPS for itself, other local authorities and Town and Parish Councils within its boundary to use in order to make efficiency savings.

- 21.6. Once a Framework Agreement or DPS is established, Quotes and Tenders for contracts may be invited from Suppliers included on Framework Agreement or DPS up to the financial limit stated in the Framework Agreement or DPS.
- 21.7. The Council will need to carry out a procurement exercise to select the Suppliers to include on and set up the Framework or DPS. This procurement will need to be advertised in accordance with these Contract and Procurement Procedure Rules and the Regulations. The contract value limit referred to in rule 21.6 shall be determined by the anticipated level of spend per Framework Agreement or DPS.
- 21.8. The call off from a contract under a Framework Agreement or a DPS with a value of £30,000 or above shall be published on Contract Finder.

## **22. Draw Down Agreements**

- 22.1. Authorised Officers may award Draw Down Agreements to individual Suppliers where services, supplies or works are required on an ad hoc basis e.g. JCT measured terms agreements. More than one Draw Down Agreement may be awarded to different Suppliers for the same services supplies or works.
- 22.2. Authorised Officer shall carry out a procurement process for the award of the Draw Down Agreement in accordance with these Contract and Procurement Procedure Rules.

## **23. Collaborations and Joint Procurement**

- 23.1. The Authorised Officer may participate in any collaborative or joint procurement arrangements with other Local Authorities or public bodies including membership or use of a Purchasing Consortia subject to the prior approval of the relevant Strategic Director.

## **24. Procurement by Consultants**

- 24.1. Any consultants used by the Council shall be appointed in accordance with these Contract and Procurement Procedure Rules and the Regulations. The Authorised Officer shall ensure that the consultant's performance is monitored.
- 24.2. Where the Council uses consultants to act on its behalf in relation to any procurement, then the Authorised Officer shall ensure that the consultant carries out any procurement in accordance with these Contract and Procurement Procedure Rules and Regulations.
- 24.3. Consultants may advise the Authorised Officer as to the most suitable Bidder. The Authorised Officer can use the advice given by the Consultant to make their recommendation to the Awarding Officer.
- 24.4. No Consultant shall make any decision on whether to award a contract or to whom a contract should be awarded. This decision rests with the Awarding Officer who shall sign the Tender Acceptance Form or exemption.

## **25. Nominated and Named Sub-Contractors**

- 25.1. Tenders for sub-contracts to be performed or supplies to be provided by nominated Suppliers shall be dealt with in accordance with the provisions of these Contract and Procurement Procedure Rules.

## **26. Amendments to Contracts**

### **Above Threshold Contracts**

- 26.1. An above Threshold Contract, Framework Agreement or DPS can only be changed if permitted by the Regulations. Advice must be sought from the Director: One Legal before making any changes to an above Threshold Contract or Framework Agreement.

### **Below Threshold Contracts**



26.2. In limited circumstances and having regard to the Regulations and advice from the Director: One Legal, the Awarding Officer may authorise changes to be made to contracts below Threshold.

## **27. Contract Management**

27.1. Authorised Officers shall need to actively monitor and manage a Supplier's performance throughout the contract life to ensure milestones, KPIs, deliverables and outcomes are achieved in accordance with the councils Contract Management Framework. Risks and, where appropriate, business continuity shall be managed as detailed in the tender and Contract documentation. Management data needs to be published in accordance with the Government's Transparency Code.

27.2. Plans should be made well in advance to re-procure the contract (if applicable) and an exit strategy included in the tender, procurement documentation and the contract.

| <b>DEFINITIONS</b>             |   |
|--------------------------------|---|
| <b>Advertised</b>              | As defined in Regulation 110 of the Public Contracts Regulations 2015. "An opportunity is advertised if the Authority does anything to put the opportunity in the public domain or bring the opportunity to the attention of economic operators generally or to any class or description of economic operators which is potentially open-ended, with a view to receiving responses from economic operators who wish to be considered for the award of the contract" |
| <b>Authorised Officer</b>      | Authorised Officers are persons responsible for carrying out the procurement in question and who have received corporate training on these Contract and Procurement Procedure Rules.  |
| <b>Awarding Officer</b>        | The officer with the delegated authority to award the contract.   |
| <b>Best Value for Money</b>    | The best solution for the Council taking into account price, quality and deliverability.  |
| <b>Bond</b>                    | An insurance policy: if the Supplier does not do what it has promised under a contract with the Council, the Council can claim from the insurer the sum, of money specified in the bond (often 10% of the contract value). A bond is intended to protect the Council against a level of cost arising from the Supplier's failure.   |
| <b>Budget holder</b>           | The officer responsible for the budget for the relevant procurement.  |
| <b>Bidder</b>                  | Any person who may or does submit a Quote or Tender.  |
| <b>Call-Off Contract</b>       | Means a contract awarded to a Supplier under a Framework Agreement.   |
| <b>Concession Contracts</b>    | An agreement where Suppliers are given the right to exploit works or services provided for their own gain.  |
| <b>Consultant</b>              | Someone appointed (but not under a contract of employment) for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role.   |
| <b>Contracting Authorities</b> | Bodies that are subject to the Regulations.   |
| <b>Director: One Legal</b>     | Means the senior legal adviser for the Council.   |
| <b>Draw down contract</b>      | A contract with a single Supplier where supplies, services or works are requested on an ad hoc basis.   |

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| <b>Dynamic Purchasing System (DPS)</b>       | A DPS is a procedure available to purchase commonly used goods, works or services. It is similar to a Framework Agreement but suppliers can apply to join at any time.   |
| <b>Framework Agreement</b>                   | An agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.            |
| <b>Invitation to Tender (ITT)</b>            | Invitation to tender documents in the form required by these Contract and Procurement Procedure Rules.   |
| <b>Most Economically Advantageous Tender</b> | The most economically advantageous tender will be evaluated on the basis of either: <ul style="list-style-type: none"> <li>• Price (i.e. the lowest price)</li> <li>• Cost (on the basis of a cost-effectiveness approach e.g. life-cycle costing)</li> <li>• Best price/quality ratio.</li> </ul> |
| <b>PAS 91</b>                                | Means the Publicly Available Specification 91 prequalification questionnaire published by the British Standard Institute for contracts for works and associated services and supplies (or such other document mandated for use by the Government).   |
| <b>Parent Company Guarantee</b>              | A contract that binds the parent of a subsidiary company as follows: if the subsidiary company fails to do what it has promised under a contract with the Council, the Council can require the company to do so instead.   |
| <b>Portal</b>                                | Means the portal used by the Council to conduct procurements electronically e.g. the South West Procurement Portal ( <a href="http://www.supplyingthesouthwest.org.uk">www.supplyingthesouthwest.org.uk</a> ).   |
| <b>Senior Policy and Governance Officer</b>  | An officer engaged by on or on behalf of the Council to provide procurement services.  |
| <b>Strategic Director</b>                    | Means a strategic director of the Council.   |
| <b>Quote / Quotation</b>                     | A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).  |
| <b>Regulations</b>                           | Means the Public Contracts Regulations 2015, Concession Contracts Regulations 2016, Utilities Contracts Regulations 2016 or any other UK legislation regulating procurements by local authorities (as may be amended, modified or replaced from time to time).                                     |
| <b>Regulation 84 Report</b>                  | The report about the procurement required to be compiled under Regulation 84 of the Public Contracts Regulations 2015.   |

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| <b>Section 151 Officer</b> | The officer of the Council who has been designated as such pursuant to Section 151 of the Local Government Act 1972.   |
| <b>Substantial</b>         | <p>In relation to a change to an existing contract of framework agreement means where one of the following conditions is met:-</p> <ul style="list-style-type: none"> <li>(a) the change renders the contract or the framework agreement materially different in character from the one initially concluded;</li> <li>(b) the modification introduces conditions which, had they been part of the initial procurement procedure, would have; <ul style="list-style-type: none"> <li>(i) allowed for the admission of other bidders than those initially selected,</li> <li>(ii) allowed for the acceptance of a tender other than that originally accepted, or</li> <li>(iii) attracted additional participants in the procurement procedure;</li> </ul> </li> <li>(c) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;</li> <li>(d) the modification extends the scope of the contract or framework agreement considerably;</li> <li>(e) a new contractor replaces the one to which the contracting authority had initially awarded the contract in cases other than those provided for in Rule 28(1)(d).</li> </ul> |
| <b>Supplier</b>            | A person or body of persons providing, or seeking to provide, supplies, services or works to the Council.  |
| <b>Tender</b>              | A Bidder's proposal submitted in response to an Invitation to Tender.  |
| <b>Threshold</b>           | Means the values set by the UK Government, or such other Government or Regulatory body, which determine whether a procurement has to be carried out in accordance with the Regulations (except Part 4 of the Public Contracts Regulations which applies for procurements with a value of £25,000 and above).   |