

Contract Rules

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CONTRACT RULES

SECTION 1: GENERAL COMPLIANCE AND SCOPE

1. COMPLIANCE

- 1.1 Every contract entered into by the Authority shall be entered into pursuant to or in connection with the Authority's functions and shall comply with:
- 1.1.1 All relevant statutory provisions including codes and statutory guidance e.g. Local Government Transparency Code ~~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 Authority's Constitution including these Contract—Rules, the Authority's Financial Rules and Scheme of Delegation;
 - 1.1.4 The Authority's strategic objectives, Procurement Strategy, Procurement Code (which includes template documentation) and relevant policies
- 1.2. The policy of the Authority, and the objective of these Contract Rules, is to ensure that all works, goods 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.

Commented [CO1]: This may be updated further following publication on the awaited Green Procurement which will deal with any change once we transition out of the EU on Dec 31st

2. SCOPE

- 2.1 These Contract Rules apply to any arrangement made by, or on behalf of, the Authority for the carrying out of works , the provision of services or the supply of supplies or for the supply of goods or services.
- 2.2. These Contract Rules do not apply to:
- 2.2.1 contracts of employment which make an individual a direct employee of the Authority;
 - 2.2.2 the acquisition, disposal, or transfer of land (which must be carried out by the Executive Director of Finance and Assets or any other officer with delegated authority ~~the Head of Property Services~~) except where services or works are required by the Authority as part of the land transaction.
E.g. development regeneration agreements projects

- 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.
- 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, net of VAT, as estimated by the Authority 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 Candidates 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.
- 3.3 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 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 Rules, the Regulations and the Procurement Code
- 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 Authority the Authorised Officer ensuring compliance with
- the Authority's duty to consult under Section 3 Local Government Act 1999
 - the Authority's duties under the Equality Act 2010.
 - The Public Social Value Act 2012 for contracts for services over the EU threshold to ensure how the procurement might improve the economic, social and environmental well-being of the geographical area the Authority 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 and Tenders below £25,000 or less £10,000.00~~ 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 ~~Quotes and~~ Tenders ~~with a value above £25,000~~ ~~£10,000.00~~, instructing the Council's Solicitor 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 Authority 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 EU threshold and TUPE applies or
 - is over budget

shall be referred to the Cabinet for decision, unless otherwise stated elsewhere in the Authority's Constitution..

CONTRACT VALUES

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

Estimated Total Contract Value	Contract Letting Requirements & Forms of Contract
<p><u>Up to £10,000</u> <u>£10,000 and below</u></p>	<p>The Budget Holder can purchase from the source that offers the Best Value for Money to the Authority.</p> <p>This could be demonstrated by the obtaining of <u>two 2</u> written Quotes, where <u>this is possible and via the Procurement Portal where appropriate.</u></p> <p>Contracts shall be by purchase order with <u>the relevant</u> standard terms and conditions attached <u>or otherwise drawn to the attention of the Supplier.</u></p>
<p><u>From £10,001 to £50,000</u> <u>Above £10,000 to £25,000</u></p>	<p><u>At least three written quotes shall be sought through the Portal using the Request for Quote template</u></p> <p><u>Where a procurement opportunity with a value estimated to be £25,000 or above is Advertised, it must also advertised on Contract Finder using the Portal within 24 hours of any adverts appearing with unrestricted and full direct internet access to relevant contract documents.</u></p> <p><u>A pre- qualification stage is not permitted but appropriate suitability questions may be asked in the Rest for Quote.</u></p> <p><u>If the lowest Quote received exceeds £25,000, the contract shall not be awarded unless the contract is below the relevant Threshold and either</u></p> <ul style="list-style-type: none"> <u>• a waiver is approved in accordance with Rule 6.1 or</u> <u>• approval is given by the Section 151 Officer.</u> <p><u>Unless a waiver or approval of the Section 151 Officer is given, a new procurement will be required which must be carried out in accordance with the above £25,000 to Threshold procedures</u></p> <p><u>Shall be advertised on the website of the Authority (and/or other public advertisement as determined</u></p>

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	<p>by the Authorised Officer) unless, in consultation with the S151 officer, and the Council's Solicitor, it is agreed to approach suppliers on an ad hoc basis (in which case 3 written quotes shall be sort).</p>
<p>From £50,001 to EU Threshold</p> <p><u>Above £25,000 to Threshold</u></p>	<p>Shall be advertised on the website of the Authority and on Contract Finder using the Authority's e-procurement system (within 24 hours of any other adverts appearing) (and/or other public advertisement as determined by the Authorised Officer) together with unrestricted and full direct internet access to relevant contract documents</p>

	<p>An open procedure shall be followed for goods and services.</p> <p>Pre-Qualification Questionnaires (PQQ's) can be used in procurements above the lower EU threshold for goods and services for tender opportunities for works contracts.</p> <p>A formal written contract prepared/approved by the Council's Solicitor must be utilised.</p> <p>A full competitive procurement shall be undertaken through the Portal using an Invitation to Tender.</p> <p>The opportunity must be advertised on Contract Finder (within 24 hours of any other adverts appearing) (and/or other public advertisement as determined by the Authorised Officer) 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 Authority Solicitor 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</p>
EU Threshold and Above	<p><u>A full competitive procurement shall be undertaken through the portal using an Invitation to Tender</u></p> <p><u>Procurement opportunities shall be advertised</u></p> <ul style="list-style-type: none"> • <u>Either in the Find a Tender Service as required by law</u> • <u>On Contract Finder within the time limit specified in the Regulations</u> <p><u>The Procurement Advisor, consultation with the Authority's Solicitor, shall advise on the most appropriate procurement procedure to be used when conducting a procurement. The Regulations set out the permitted procurement procedures;the</u></p>

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two most common procedures are:

- Open Procedure – a one stage process where anyone can submit a tender
- Restricted Procedure – a two stage process where a Selection Questionnaire is used to shortlist Candidates who are then invited to submit a tender.

The following procedures can only be used in certain circumstances. See the Procurement Code for further detail.

- **Innovation Partnership:**

This may be used when the Authority 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.

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.

- **Competitive dialogue**

This can be used where either of the following apply:

- I. the need of the Authority cannot be met without adaption of the readily available solutions;
- II. they include design or innovative solutions;
- III. specific circumstances related to the nature, the complexity or the legal and financial makeup or because of the risks attaching to them;
- IV. the technical specifications cannot be established with sufficient precision with reference to a standard UK Technical Assessment, common technical specification or technical reference;
- V. where, in response to an open or a restricted procedure, only irregular or unacceptable tenders were submitted, provided that the Authority includes in the

~~procedure all of, and only, the Candidates that meet certain criteria and submitted tenders in accordance with the formal requirements of the failed procedure~~

~~• **Competitive Procedure with negotiation**~~

~~This procedure can be used for the same reasons as competitive dialogue. With this procedure, the Authority can negotiate with Candidates who have submitted tenders to seek improved offers.~~

~~A formal written contract prepared or approved by the Authority's Solicitor must be used.~~

~~Shall be advertised in the Official Journal of the European Journal (OJEU), on the website of the Authority and on Contract Finder using the Authority's e-procurement system (within 3 days of the receipt of OJEU notice at publications office or within 24 hours of the OJEU notice being published) (and/or other public advertisement as determined by the Authorised Officer)~~

~~Pre-Qualification Questionnaires (PQQ's) can be used in procurements above the lower EU threshold for goods and services for tender opportunities for goods, services **and works**.~~

~~The Procurement Adviser in consultation with the Council's Solicitor shall advise on the most appropriate EU procurement procedure to be used for the relevant goods, services and/or works to be procured. The two most common procedures are:~~

- ~~• Open Procedure — anyone can submit a tender~~
- ~~• Restricted Procedure — following receipt of expressions of interest a pre-qualification questionnaire (PQQ) is used to shortlist Candidates who are then invited to submit a tender.~~

~~The following procedures can only be used in certain circumstances. See the Procurement Code for further detail.~~

● **Innovation Partnership;**

This may be used when the Authority 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.~~

~~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.~~

◆ ~~**Competitive dialogue**~~

~~This can be used where either of the following apply:~~

~~(i) the need of the Authority cannot be met without adaptation of readily available solutions;~~

~~(ii) they include design or innovative solutions;~~

~~(iii) specific circumstances related to the nature, the complexity or the legal and financial makeup or because of risks attaching to them;~~

~~(iv) the technical specifications cannot be established with sufficient precision with reference to a standard, European Technical Assessment, common technical specification or technical reference;~~

~~(v) where, in response to an open or a restricted procedure, only irregular or unacceptable tenders were submitted, provided that the Authority includes in the procedure all of, and only, the tenderers that meet certain criteria and submitted tenders in accordance with the formal requirements of the failed procedure~~

◆ ~~**Competitive Procedure with negotiation.**~~

~~This procedure can be used for the same reasons as competitive dialogue. With this procedure the Authority can negotiate with~~

	<p>Candidates who have submitted tenders to seek improved offers.</p> <p>A formal written contract prepared/approved by the Council's Solicitor must be utilised.</p>
Light Touch Regime	<p>Contracts involving the following goods and services are subject to a 'light touch' regime if the value of the contract is below the prescribed threshold contained in the <u>prescribed Threshold EU Regulations</u>;</p> <ul style="list-style-type: none"> • Health, social and related services • Administrative social, educational, healthcare and cultural services • Compulsory social security services • Benefit services • Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services • Legal services • Other administrative services and government services • Provision of services to the community • Prison related services, public security and rescue services • Investigation and security services • International services • Postal services • Miscellaneous services listed in schedule 3 of the Public Contract Regulation 2015 <p>Advice must be sought from the Procurement Adviser before undertaking a light touch regime procurement.</p>

	A formal written contract prepared/approved by the Authority's Council's Solicitor must be utilised.
Concessions	<p>A concession contract is an agreement where Suppliers are given the right to exploit works or services provided for their own gain. Suppliers can either receive consideration for their services solely through third party sources or partly through payment from the contracting authority along with income received from third parties e.g. a services concession is where a supplier has a contract to manage an Authority's catering services for its staff. The Authority does not doesn't pay the Supplier to run the services and its income is solely through the staff using the facilities. The risk in the concession making a profit is with the Supplier and not the Authority.</p> <p><u>A formal written contract prepared/approved by the Authority's Solicitor must be utilised</u></p>
Disposal of assets (other than land)	Where the Authority is selling or disposing of assets without the provision of services then the Authority's obligation is to achieve the best value for the items. This could be achieved by obtaining quotes or conducting a full tender depending upon the items being disposed of. Any disposal must be in accordance with the Authority's Finance Rules.
Disposal of Land	These contract rules apply where the Authority is disposing of or acquiring land and there is an element of services or works required by the Authority as part of the transfer (E.g. regeneration projects)

6. ~~EXEMPTIONS AND WAIVERS~~

6.1 Subject to the written approvals referred to in Contract Rule 6.2 below, waivers of any of these Contract Rules shall only be given in the following exceptional circumstances:-

6.1.1 Where the ~~supplies, works or services~~ ~~goods, materials, 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/Contractors;~~
or

- 6.1.2 The goods or materials to be purchased are proprietary articles or are sold only at fixed prices; or
- 6.1.3 The price of services, ~~or supplies goods or materials~~ 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 s151 Officer and the ~~Authority's Council's~~ Solicitor considers that the services to be provided or the work to be executed or the goods or materials to be purchased are urgent; (subject to the action being reported to the next Cabinet Meeting) 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 Authority's best interest to engage a particular consultant, solicitor, barrister, agent, artist or adviser;

or

- 6.1.6 ~~Where the Authority 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 Authority's best interests to acquire those contracts; or~~
~~The goods or materials to be purchased are within a bulk purchasing agreement made between the Authority and a consortium or other organisation approved by the Authority; or~~
- 6.1.7 The works to be executed or the goods or materials to be purchased can only be carried out or supplied by a statutory body.

- 6.2 These Contract Rules cannot be waived for the procurements above the prescribed relevant ~~EU~~-Threshold.

Where it is possible to waive these Contract Rules, any such waiver must be agreed by:

- 6.2.1 Cabinet for contracts above £100,000.00 or the Head of Paid Service in consultation with the Leader of the Authority, the Section 151 Officer and the Authority's Solicitor if the matter requires an urgent decision and a meeting of the Cabinet cannot be called; or

6.2.2 The Budget Holder (if authority do so has been delegated to them in accordance with the Constitution), in consultation with the Section 151 Officer and the Council's Solicitor if the contract does not exceed is £100,000.00 or less.

6.3 A record of the decision and the reasons for it shall be kept and the wavier itself shall be kept by the Authority's Council's Solicitor.

SECTION 3: QUOTATION AND TENDERING PROCESSTENDERING AND QUOTATION PROCESS

7. ADVERTISING (above £25,000£10,000.00)

7.1 Adverts shall include as a minimum:

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

7.2 Where adverts are placed on Contract Finder unrestricted and full direct internet access to relevant contract documents shall be available on the Authority's website and the Authority's Procurement portal e-procurement system free of charge when the advert is placed.

7.3 Opportunities with a value over the relevant relevant EU Threshold must also be advertised on the Find a Tender website in the Official Journal of the European Union (OJEU) by submitting a Contract Notice using the Authority's Procurement portal e-procurement system

8. SUITABILITY ASSESSMENT (under EU threshold) AND PRE-QUALIFICATION (above EU threshold only)

8.1 Authorised Officers are responsible for ensuring that all Candidates 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 £10,000

Under EU Threshold

8.2 As part of the tender or quotation process Authorised Officer shall establish that the potential Candidates 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 contracts above the lower EU threshold (supply and services level) a ~~p~~Pre-Qualification Questionnaire (PQQ) stage is permitted. Officers must use ~~form~~ PAS91 or such other required ~~PQQ~~ template required by law or by the Government.

8.5 **Above EU Threshold**

Procurements above the ~~EU~~ threshold can use a ~~p~~Pre-Qualification Questionnaire (PQQ) stage. Officers must use the Selection Questionnaire PQQ form issued by the Government or for works contract form PAS91 or such other templates as required by law or by the Government. ~~required PQQ template. 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 Procurement Advisor, S151 Officer and the Council's Solicitor.~~

Any deviations from the standard form must be reported to the Cabinet Office. Changes to the form are not permitted without the consent of the Procurement Advisor, Section 151 Officer and the Auhroity's solicitor

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

8.7 ~~Financial and due diligence checks must be undertaken where the value of the contract is above £10,000.00~~ for all contracts

8.8 ~~Any procurement subject to appropriate EU Regulations.~~ the EU Regulations shall comply in the

9. **ELECTRONIC TENDERING**

9.1 ~~On the 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 used electronic means of communication in accordance with the requirements of the Regulations. Until electronic tendering becomes compulsory, the Authorised Officer following consultation with the Procurement Advisor or Council's Solicitor may authorise:~~

9.2 Except for procurements with a value of £10,000 or below, the procurement shall be carried through the Portal unless otherwise permitted by these Contract Rules or by the Procurement Advisor and the Section 151 Officer. For

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quotes under £10,000 the Portal should

- ~~9.1.1 the transmission of Quotes and Tenders by electronic means;~~
- ~~9.1.2 the carrying out of an electronic auction where satisfied that it is in the interests of the Authority to do so;~~
- ~~9.1.3 the carrying out of the whole tendering process and the award of the contract by electronic means, using the Authority's e-procurement system, where satisfied that it is in the interests of the Authority 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 ~~EU-T~~ 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:
 - 10.3.1 ~~#~~ tenders can be submitted for one, for several or for all of the lots or.
 - 10.3.2 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 tenderer, 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. SUBMISSION AND OPENING OF TENDERS AND QUOTES INVITATION TO TENDER

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

~~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 Procedure Rule 11.3 below, no Tender delivered in contravention of this Contract Procedure Rule shall be considered.~~

11.2 Tenders and Quotes must be submitted electronically via the Portal and the Authorised Officer shall ensure that the submissions are kept secure and unopened until the specified date and time. The Authorised Officer shall carry out opening of the Tenders and Quotes in accordance with instructions given by the Procurement Adviser.

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11.3 No Tenders or Quotes received after the specified date and time for receipt shall be accepted or considered by the Authority unless the Authorised Officer, after consulting with the Procurement Adviser, the Section 151 Officer and the Authority's Solicitor is satisfied that there is sufficient evidence that either:

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- the Tender or quote was dispatched in sufficient time for it to have for it to have arrived before the closing date and time
- Technical difficulties with the Portal prevented the Tender or Quote from being submitted before the closing date and time

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No Tenders received after the specified date and time for receipt of Tenders shall be accepted or considered by the Authority unless the Authorised Officer, after consulting the Procurement Adviser, s151 Officer and the Legal Adviser, 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 to Quote as appropriate.

Tenders (over £50,000.00)

12.2 All Tenders received shall be addressed to the Procurement Adviser in a plain sealed envelope endorsed with the words "Tender—Do Not Open" followed by the subject matter to which it relates (but no other name or mark indicating the sender). Tenders shall be kept in a safe place by the Procurement Adviser and remain unopened until the time and date specified for their opening.

12.3 Where tenders are submitted electronically via the Authority's e-procurement system, authorised officers shall ensure that they are kept secure and unopened until the specified date and time.

12.4 Tenders shall be opened by at least one officer nominated by the Budget Holder and the Procurement Adviser or their nominated officer. An immediate record shall be made of the Tenders received including names, amount of tender and the date and time of opening.

Quotes (over £10,000.00)

~~12.5 All quotes received shall be addressed to the Authorised Officer in a plain sealed envelope endorsed with the words "Quote – Do Not Open followed by the subject matter to which it relates (but no other name or mark indicating the sender). Quotes shall be kept in a safe place by the Authorised Officer and remain unopened until the time and date specified for their opening.~~

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~~12.6 Quotes shall be opened by the Authorised Officer who shall keep a note on file of the names, amount of tender and the date and time of opening.~~

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~~If the submission of quotes is electronically under Contract Rule 9.1, the Authorised Officer shall ensure that the quotes are not opened until the time and date specified for their opening.~~

~~12.812.5 No Tenders or Quotes received after the specified date and time for receipt shall be accepted or considered by the Authority unless the Authorised Officer, after consulting the s151 Officer and the Council's Solicitor, is satisfied that there is sufficient evidence for the Tender or Quote having been despatched in sufficient time for it to have arrived before the closing date and time~~

12 ARITHMETICAL ERRORS, POST TENDER CLARIFICATION AND ABNORMALLY LOW TENDERS

12.1 Candidates 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 officers of the Tender or Quote reveals arithmetical errors or discrepancies which affect the Tender or Quote figure. The Candidate shall be given details in writing of such errors or discrepancies and afforded an opportunity of confirming, amending or withdrawing their offer in writing.

12.2 in and above Threshold Procurement, ~~EU Procurement~~ the Authority must require tenderers 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.

All other post-tender clarifications shall:

12.2.1 only be undertaken following consultation with the Procurement Adviser and the ~~Authority's Council's~~ Solicitor; and

12.2.2 not disclose commercially sensitive information supplied by other Candidates ~~for the contract~~

13 TENDER EVALUATION

- 13.1 Tenders and Quotes shall be evaluated in accordance with the relevant regulations and the award criteria set out in the Invitation to Tender or Request for Quote.
- 13.2 All contracts shall be awarded on the basis of the offer which represents the most economically advantageous, taking into account price and/or quality, to the Authority.
- 13.3 The award criteria shall be predetermined and listed in the Invitation to Tender or Request for Quotation 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.
- 13.4 For all Contracts regardless of value, no person with a personal or financial interest in any of the Contractors submitting a proposal should be involved in any way in influencing the decision as to which Contractor 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.
- 13.5 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, Candidates must be informed of the evaluation criteria and weighting in the Tender documents.
- 145. AWARDING CONTRACTS ~~(Over £10,000.00)~~**
- 14.1 The Authority shall only accept a tender and award a contract to the Candidate submitting the Most Economically Advantageous Tender/Quote

14.2 Depending on what is being procured and whether or not it is an above Threshold procurement an EU 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.

14.3 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.

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14.4 For contracts with a value of £25,000 or above, regardless of whether 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 the contract award. If below Threshold, the award notice must state, whether or not the Supplier is a Small and Medium-sized enterprise (SME) or voluntary, community and social enterprise (VCSE)

15.4 ~~Where the contract award opportunity was advertised, a contract award notice containing the name of the Contractor, 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 EU Threshold include whether or not Contractor is a Small and Medium-sized Enterprise (SME) or voluntary, community and social enterprise (VCSE)~~

15.5 ~~A Contract Award Notice must be published in OJEU where there has been an above EU Threshold Procurement and the relevant standstill period observed. The contract shall not be completed or Purchase Order issued unless the standstill period passes with no challenges. Authorised Officer shall notify the Procurement Adviser and the Council Solicitor immediately following receipt of a challenge.~~

15.6 ~~For contracts over £10,000.00 the purchase order shall not be issued until the formal written contract has been completed.~~

156. DEBRIEFING

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

167. EXECUTION OF CONTRACTS

167.1 All contracts not exceeding ~~£25,000~~~~£10,000.00~~ shall be signed by the relevant Budget Holder, unless the ~~Authority's Council's~~ Solicitor requires that the contract be sealed.

167.2 All contracts exceeding ~~£25,000~~~~£10,000.00~~ but not exceeding £50,000.00 shall be signed by the ~~Authority's Council's~~ Solicitor unless the ~~Authority's Council's~~ Solicitor requires that the contract be sealed.

167.3 All contracts exceeding £50,000.00 shall be executed as a deed by the ~~Authority's Council's~~ Solicitor and the common seal affixed to the contract unless the Authority's considers it more expedient to sign the contract.

~~48.16.4~~ Electronic signatures may only be permitted as a method of executing contracts with prior consent of the Section 151 officer having first obtained advice from the Authority's Solicitor.

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RECORDS OF QUOTES TENDERS AND CONTRACTS

178.1 The Procurement Adviser shall maintain a list of all Tenders and Quotes over £25,000 received. For procurements not exceeding £25,000, the Authorised Officer is responsible for keeping records of Tenders and Quotes received in such form as required by the Procurement Adviser.

178.2 All contracts with a value of £25,000 and above shall be kept by the Authority's Solicitor and a copy shall be sent to the Procurement Adviser.

~~A Contracts Register of all contracts awarded over £5,000.00 shall be maintained by the Authority~~

178.3 All contracts below that value shall be kept securely by the Budget Holder in accordance with the Authority's retention policy and a copy sent to the Procurement Adviser.

~~All contracts over £10,000.00 shall be kept by the Council's Solicitor~~

189. BONDS AND PARENT COMPANY GUARANTEES

~~189.1~~ Bonds or Parent Company Guarantee will be required on all works contracts above £1,000,000.00 or for a contract of a lesser value if considered appropriate by the Section 151 Officer following consultation with the ~~Authority's Council's~~ Solicitor

~~189.2~~ Bonds or Parent Company Guarantee may be required for any contract if considered appropriate by Section 151 Officer following consultation with the ~~Authority's Council's~~ Solicitor

~~189.3~~ Bonds shall be a minimum of 10% of the contract value.

~~1920.~~ **EMBEDDED LEASES & EMBEDDED DERIVATIVES**

~~1920.1~~ Prior to the award of a contract the Authorised Officer must notify the S151 officer where under the contract:

~~1920.1.1~~ the Authority will have use or control of or will be paying for the use of a specific asset or group of assets; or

~~1920.1.2.~~ contains a clause that caps the price the Authority has to pay for supplies or services or there is floor price on the price the Authority has to pay for supplies or services; or

~~20.1.3~~ ~~19.1.3~~ the prices the Authority has to pay under the contract, increase by more than 2 times RPI; or

~~20.1.4~~ ~~19.1.4~~ the prices the Authority has to pay, increase by some other form of Indices or commodity price.

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~~SECTION 45:~~ **SPECIFIC TYPES OF TENDERING**

~~204.~~ **FRAMEWORK AGREEMENTS**

~~204.1~~ **FRAMEWORK AGREEMENTS AND DYNAMIC PURCHASING SYSTEMS SET UP BY OTHER CONTRACTING AUTHORITIES**

~~204.2~~ External Framework Agreements and Dynamic Purchasing Systems (DPS), where the Authority is named or identified as part of a class of permitted users, can be used where the Authority wishes to contract for the sourcing of supplies, services or works without conducting a new procurement exercise.

~~204.3~~ The Framework Agreement and DPS may include within its terms a requirement for a mini competitive exercise between some or all of those Suppliers who are parties to the Framework Agreements and can provide the goods/services being tendered. Other Framework Agreements and DPS may allow for a direct award or the choice of either direct award or mini completion. Any Call-Off from a Framework Agreement shall be tendered in accordance with the procedure set out in the Framework Agreement or DPS.

204.4 The approval of the Procurement Adviser or Council's Solicitor shall be sought before signing up to a new Framework Agreement or DPS.

204.5 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 a contract approved by the Council's Solicitor, shall be entered into.

FRAMEWORK AGREEMENTS SET UP BY THE AUTHORITY

204.6 The Authority may carry out procurement exercises to set up Framework Agreements or DPS to allow it to choose ~~contractors or~~ Suppliers who meet its pre-qualification requirements. The Authority can then Call-Off Suppliers from the Framework Agreement or the DPS without having to carry out a further procurement exercise. This could be useful where the Authority has need to call on Contracts urgently or often. The Authority could also set up a framework agreement for itself and other local authorities to use in order to make efficiency savings.

204.7 Once a Framework Agreement or DPS is established, Quotes and Tenders for contracts may be invited from Suppliers included on Framework Agreement up to the limit stated in the Framework or DPS.

204.8 The Authority will need to carry out a procurement exercise to select the Suppliers to include on the Framework Agreement or DPS. This procurement will need to be advertised in accordance with these Contract Rules. The Contract Value is to be determined by the anticipated level of spend per Framework Agreement or DPS.

PUBLISHING THE AWARD OF CALL-OFF CONTRACTS UNDER ALL FRAMEWORK AGREEMENTS

204.10 The call off of a contract under a framework with a value of £25,000.00 or over shall be published on Contract Finder

212. DRAW DOWN AGREEMENTS

212.1 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.

212.2 Authorised Officer shall carry a procurement process for the award of the Draw Down Agreement in accordance with these contract rules

223. COLLABORATIONS AND JOINT PROCUREMENT

223.1 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 Director and Procurement Adviser.

234. PROCUREMENT BY CONSULTANTS

234.1 Any consultants used by the Authority shall be appointed in accordance with these Contract Rules. The Authorised Officer shall ensure that the consultant's performance is monitored.

234.2 Where the Authority 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 Rules.

234.3 Consultants may advise the Authorised Officer as to the most suitable candidate. The Authorised Officer can use the advice given by the Consultant to make their recommendation to the Awarding Officer.

234.4 No Consultant shall make any decision on whether to award a contract or who a contract should be awarded to. This decisions rests with the Awarding Officer who should sign the Tender Acceptance Form

245. NOMINATED AND NAMED SUB-CONTRACTORS

245.1 Tenders for sub-contracts to be performed or goods and materials to be supplied by nominated suppliers shall be dealt with in accordance with the provisions of these Contract Procedure Rules

SECTION 56

CONTRACT MANAGEMENT AND AMENDMENTS TO CONTRACTS DURING THEIR TERM

2526. AMENDMENTS TO CONTRACTS

Above Threshold Contracts

256.1 An above Threshold Contract, Framework Agreement or DPS can only be changed if permitted by the Regulations. Advice must be sought from the Authority's Solicitor before making any changes to an above Threshold Contract or Frameowrk Agreement

~~A contract may be changed in any of the following circumstances:~~

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~~a) The contract contains a clear review or option clause which specifies the conditions as to when an amendment can be made. The scope and the nature of the change and the overall nature of the contract must not change~~

~~b) Additional works, services or goods that have become necessary and a change of supplier would not be practicable for economic or technical reasons or would involve substantial inconvenience/duplicate cost (limited to 50% of original contract price).~~

~~c) the need for change could not have been foreseen by a diligent contracting authority; and~~

- ~~• the changes do not affect the overall nature of the contract; and~~
- ~~• any increase in price does not exceed 50% of the price of the original contract.~~

~~d) where a new contractor replaces the one to which the contracting authority had initially awarded the contract as a consequence of~~

~~(i) an unequivocal review clause or option in conformity with Rule 26(1) (a), or,~~

~~(ii) universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established, provided that this does not involve other substantial changes to the contract and is not aimed at circumventing the application of the EU Regulations~~

~~e) The changes, irrespective of their value, are not Substantial (see the Definitions section for the definition of Substantial)~~

~~e) It is a change that does not affect the overall nature of the contract or Framework Agreement and the value of the change does not exceed~~

- ~~• The relevant EU Threshold
10% (goods and/or services) 15% (works) of the initial value of the contract.~~

Below Threshold Contracts

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~~265-2~~ In limited circumstances and having regard to the Regulations and advice from the Authority's solicitor, the Awarding Officers may authorise changes to be made to contracts below Threshold Contracts.

~~Where successive changes are made, the value shall be the net value of the successive changes.~~

~~26.3~~ ~~Where changes to a contract have been made under Contract Rule 26.1 b) or c) above and the initial contract value exceeded the EU Threshold, a modification of contract notice shall be published in the OJEU~~

~~267.~~ **CONTRACT MANAGEMENT**

27.1 Authorised Officers need to actively monitor and manage a Suppliers ~~Contractor's~~ performance throughout the contract life to ensure milestones, KPI's, deliverables and outcomes are achieved and risks and, where appropriate, business continuity is 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) in line with the Commissioning and Procurement User Guide and ~~A~~ an exit strategy included in the tender and procurement documentation and the contract.

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DEFINITIONS

<u>Advertised</u>	<u>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"</u>
Authorised Officer	An officer who is authorised to undertake the procurement in question and who has received corporate training on these Contract Rules.
<u>Authority's Solicitor</u>	<u>Means the senior legal adviser for the Authority</u>
Awarding Officer	The officer with the delegated authority to award the contract
Best Value for Money	The best solution for the Authority taking into account price, quality and deliverability.
Bond	An insurance policy: if the Contractor does not do what it has promised under a contract with the Authority, the Authority 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 Authority against a level of cost arising from the Contractor's failure.
Budget holder	The officer responsible for the budget for the relevant procurement
Candidate	Any person who asks or is invited to submit a Quote or Tender.
Call-Off Contract	Means a contract awarded to a supplier under a Framework Agreement
<u>Concessions Contracts</u>	<u>an agreement where Suppliers are given the right to exploit works or services provided for their own gain.</u>
Consultant	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.
Contracting Authorities	Bodies which are subject to the EU Regulations.
<u>Contractor</u>	<u>any person, company or supplier who has been awarded a contract in accordance with these contract rules.</u>
<u>Council's Solicitor</u>	<u>Means the senior legal Adviser for the Authority</u>

Director	Means the chief officers for the Authority, director or the Council's Solicitor
Draw down contract	A contract with a single supplier where goods, services or works are requested on an ad hoc basis
<u>Dynamic Purchasing System (DPS)</u>	<u>A DPS is a procedure available to purchase commonly used goods, works or services. It is similar to a Framework Agreement but suppliers can join at any time</u>
<u>EU Regulations</u>	The UK regulations implementing the EC public procurement directives.
<u>EU Threshold</u>	Means the values set by the European Commission which determine whether a procurement has to be carried out in
<u>Find a Tender</u>	<u>Where notices for all above Threshold procurements opportunities and contract awards must be placed</u>
Framework Agreement	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.
Head of Paid Service	Means the officer designated as head of paid for the Authority under section 4 of the Local Government and Housing Act 1989
Invitation to Tender (ITT)	Invitation to tender documents in the form required by these Contract Rules.
Most Economically Advantageous Tender	The most economically advantageous tender will be evaluated on the basis of either <ul style="list-style-type: none"> • Price (i.e. the lowest price) • Cost (on the basis of a cost-effectiveness approach e.g. life-cycle costing) • Best price/quality ratio
<u>OJEU</u>	Official Journal of the European Union — where notices for all above EU Threshold procurements opportunities and contract awards must be placed.
Parent Company Guarantee	A contract which 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 Authority, the Authority can require the company to do so instead.
Procurement Adviser	The procurement officer for the Authority
<u>Procurement Contract Regulations (PCR15)</u>	<u>The UK regulations implementing the public procurement directives</u>
Quote	A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).

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Regulation 84 Report	Means the report about the procurement required to be compiled under Regulation 84 of the Public Contracts Regulations 2015
Substantial	<p>In relation to a change to an existing contract of framework agreement means where one of the following conditions is met:-</p> <p>(a) the change renders the contract or the framework agreement materially different in character from the one initially concluded; .</p> <p>(b) the modification introduces conditions which, had they been part of the initial procurement procedure, would have— .</p> <p>(i) allowed for the admission of other candidates than those initially selected, .</p> <p>(ii) allowed for the acceptance of a tender other than that originally accepted, or .</p> <p>(iii) attracted additional participants in the procurement procedure; .</p> <p>(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; .</p> <p>(d) the modification extends the scope of the contract or framework agreement considerably; .</p> <p>(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).</p>
Supplier	A person or body of persons providing, or seeking to provide, supplies, services or works to the Authority.
Tender	A Candidate's proposal submitted in response to an Invitation to Tender.
<u>Threshold</u>	<u>Means the values set out in the Public Contract Regulations which determine if a procurement needs to be carried in accordance with the Public Contract Regulations</u>