



# Contract Procedure Rules

Version 3.0, July 2022

## **1.0 General**

- 1.01 Under s.135 Local Government Act 1972, every local authority must make standing orders with respect to the making of contracts for the supply of goods or materials or for the execution of works.
- 1.02 The scope of these Contract Procedures Rules is that of both the council and the councils wholly owned company Norwich City Services Ltd (NCSL)
- 1.03 The use of the word 'council' in this document should be deemed as meaning both the council and NCSL unless explicitly stated. See paragraphs 7.04-7.07, 22.07-22.08, 25.03.
- 1.04 The primary objective of these contract procedures is to ensure that all contracts for works, services and supplies (goods and services) are entered into by the council in a manner which:
  - 1.04.1 secures the best possible value for money;
  - 1.04.2 ensures probity, transparency and equality;
  - 1.04.3 protects those involved in the procurement process.
- 1.05 To do this the selection and award procedures for contracts must be conducted fairly, transparently and in an open and regularised way. The council must conform to relevant legal requirements.
- 1.06 References to the corporate leadership team, chief finance officer and the monitoring officer in these procedures shall have the same meaning as defined in financial regulations.

## **2.0 Application**

- 2.01 These contract procedures are made pursuant to the Local Government Act 1972 Section 135 and shall apply to contracts and contracting procedures, whether formal or otherwise, for the purchase of works, goods or services. They relate to both revenue and capital expenditure.
- 2.02 No contract, extension of contract or purchase may be made unless an approved budget exists for the expenditure.
- 2.03 Officers responsible for purchasing must comply with these contract procedures. They lay down minimum requirements and a more thorough procedure may be appropriate for a particular contract. (For example, it may not always be appropriate to make use of an exemption in accordance with section 6 below even if one might apply or be granted.)

2.04 For the purposes of these procedures, where there is a requirement for communication to be in writing, this shall be deemed to include e-mail and fax transmissions as well as hard copy.

2.05 Officers responsible for purchasing must:

2.05.1 follow the procedures for the purchase of goods or services or order works;

2.05.2 take all necessary legal, financial and professional advice;

2.05.3 declare any personal or financial interest in a contract. Corruption is a criminal offence;

2.05.4 conduct a value for money review and appraise the need to purchase;

2.05.5 check whether there is an existing corporate contract that can be used before undergoing a competitive process;

2.05.6 allow an appropriate timeframe for submission of bids to ensure bidders have the opportunity to submit quality bids;

2.05.7 keep bids confidential;

2.05.8 ensure adequate terms and conditions are in place;

2.05.9 only commence the supply or works once a council purchase order has been issued;

2.05.10 identify a contract manager with responsibility for ensuring the contract delivers as intended and contract management is undertaken in line with the Council's policies;

2.05.11 keep records of dealings with suppliers;

2.05.12 assess each contract afterwards to see how well it met the purchasing need and value for money requirements.

### **3.0 Requirement for compliance**

3.01 Subject to procedures in section 6 (below) every contract and procurement made by or on behalf of the council shall comply with:

3.01.1 these contract procedure rules;

3.01.2 the financial regulations and the financial procedures;

3.01.3 all relevant statutory provisions or other legal requirements; and

3.01.4 any direction by the council or cabinet having appropriate delegated power.

#### **4.0 Officer conduct**

4.01 Officers employed by the council must comply with Paragraph 10 of the council's "Code of Conduct for Local Government Employees", relating to conflicts of interest.

4.02 Procurement should only be undertaken by officers adhering to the strictest professional and ethical standards. The council recognises the Chartered Institute of Procurement & Supply (CIPS) Code of Conduct<sup>1</sup> as the appropriate standard relevant to procurement activity.

#### **5.0 Segregation of duties**

5.01 The activities relating to the contracting and procurement processes are segregated in particular between the following phases:

- requisition
- authorisation
- purchase Order
- receipt
- payment

Segregation of duties must exist between raising purchase orders and commitment of expenditure and also receipt and payment.

#### **6.0 Exceptions and collaborative arrangements**

6.01 These contract procedures do not apply or may be varied where or to the extent that:

6.01.1 the contract is for the acquisition, disposal or transfer of land (for which other financial procedures apply) where there is no development or other agreement attached to the disposal/ transfer;

6.01.2 the lending or borrowing of money;

6.01.3 the contract is for the employment of individual members of staff;

6.01.4 the engagement of counsel;

6.01.5 statute or legislation prescribes otherwise;

6.01.6 goods or materials to be purchased are on sale by public auction.

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<sup>1</sup> <https://www.cips.org/aboutcips/CIPS-Code-of-Conduct/>

- 6.02 The council and its cabinet have power to waive any requirements within these contract procedures for specific projects subject to compliance with the law, and any such decision may be a key decision. A record of the reason for exception shall be included in the minutes. No exemption can be used if the Public Contract Regulations 2015 (PCR15), or other legislation applies as these will take precedent.
- 6.03 In exceptional circumstances, the strategic procurement manager and the senior procurement business partner are authorised to exempt any requirements within these contract procedures, provided that, where the contract is £100,000 or more, the chief finance officer must also authorise the exempting of these procedures.
- 6.04 Chief finance officer authorisation shall be required on any subsequent requests for exemptions linked to an original exemption request on that contract where the cumulative sum of the exemption requests is £100,000 or more.
- 6.05 Exemption arrangements do not override any other obligations including those requirements in the constitution for key, material and significant decisions.
- 6.06 Any exemption must be recorded in the appropriate register of exemptions maintained by the strategic procurement manager.
- 6.07 A request to exempt from requirements in these contract procedures may also be made where goods or materials to be purchased are:
- 6.07.1 proprietary articles or are sold by one manufacturer only at a fixed price (except where the procurement is being undertaken as a legitimate direct award from a framework arrangement)
  - 6.07.2 controlled by trade organisations or if for other reasons there would be no genuine competition
- 6.08 Where an exemption is necessary because of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to council services, the relevant officer can approve the exemption. This should then be reported to the strategic procurement manager as soon as practical, but for contracts £100,000 and over a report should be made to cabinet by the relevant council director to seek retrospective approval. If the contract party is NCSL the managing director shall seek retrospective approval from NCSL Board.
- 6.09 The monitoring officer must monitor the use of all exemptions.
- 6.10 In order to secure value for money, the council may enter into collaborative procurement arrangements. The officer must consult the strategic procurement manager where the purchase is to be made using collaborative procurement arrangements with another local

authority, government department, statutory undertaker or public service purchasing consortium.

6.10.1 All purchases made via a local authority purchasing and distribution consortium are deemed to comply with these contract procedures and no exemption is required. However, purchases above the PCR 2015 thresholds must be let under the 'above threshold' requirements of PCR 2015, unless the consortium has satisfied this requirement when letting their contract on behalf of the authority and other consortium members.

6.10.2 Any contracts entered into through collaboration with other local authorities or other public body, where a competitive process has been followed that complies with the contract procedures of the leading organisation, will be deemed to comply with these contract procedures and no exemption is required. However, advice must be sought from the procurement service.

6.11 E-procurement technology should be used in all cases where appropriate and does not negate the requirement to comply with all elements of these contract procedures, particularly those relating to openness, transparency, honesty and fairness.

## **7.0 Estimate of contract value**

7.01 Before any invitation to quote or tender is released the relevant officer in the service area is required to draw up in writing a specification of the council's requirement. This is to make clear all aspects of the goods, works and services the council intends to procure and over what period. Where appropriate, services may seek to use an open specification that identifies the outcomes required for the procurement but allows suppliers the opportunity to then outline their proposed route for delivery.

7.02 From this an estimate is to be made of the value of a contract or purchase to allow for the correct procedure to be followed. This estimate and the basis of it is to be recorded in writing by the relevant officer.

7.03 The applicability of any part of these procedures referring to value or amount shall, where relevant, be determined on the basis of that estimate whether or not the contract relates to capital or revenue expenditure.

### **Contract Award - Key Decisions**

7.04 Paragraphs 7.05 and 7.06 are only applicable where the contracting party is the council.

7.05 The Constitution shall determine the key decision criteria.

- 7.06 Before entering into a contract for the supply of goods, services or the execution of any work which is first estimated to be over the councils key decision value or meets another of the key decision criteria the appropriate service area director shall submit to the cabinet a report giving an estimate of the expense and seeking approval to award or seeking delegated authority to award a contract. The report must be marked as a key decision.
- 7.07 Those contracts below the key decision value shall not be entered into unless the delegated approvals and notifications are made as required in the constitution.

### **Calculation of estimate**

- 7.08 For the purpose of deciding the correct procedure to be followed it is a requirement that all foreseeable purchases or contracts for the required goods, works or service be aggregated. In compliance with PCR 2015 the requirement must be calculated across the whole council, and not just a single department, as the organisation is deemed to be a single procuring body. The estimate shall be calculated on the basis of any continuing purchase of a number of similar items and where the requirement is for an indeterminate period exceeding 12 months the contract value should be calculated over a 4-year period. No attempt shall be made to avoid obtaining tenders by:
- 7.08.1 estimating the price for one article only when the order is for several articles; or
- 7.08.2 placing two or more orders to keep the total sum below the financial limit, or if potentially likely to exceed threshold limits, the guidance as stated in regulation 8 of the PCR 2015.
- 7.09 Estimates shall be calculated on the total value over the whole term of the contract including all fees, insurance premiums and any other amounts payable. For avoidance of doubt this may not just be the direct cost to the council.

## **8.0 Contracts register and awarded contracts**

- 8.01 A detailed contract register for those contracts in excess of £5,000 will be maintained by the procurement team for the council and NCSL and made publicly available.
- 8.02 The procurement team will retain decision records and all required information for the contract register when the contract is less than £100,000; where the contract is £100,000 or more, the procurement team will retain a full record of contract information. Service areas are required to retain all other appropriate documentation in relation to the agreement and contract management . Those records are to be

disposed of in lines with the councils document retention policy.

- 8.03 Where a contract has been awarded it must be used for all requirements that relate to that contract.
- 8.04 The council and its contracted suppliers make a considerable investment in negotiating and preparing contracts and when a contract has been awarded to a contractor it must be honoured. To place purchase orders / contracts with alternative suppliers other than the contract holder may frustrate the contract and open the council to expensive litigation.
- 8.05 On the exceptional occasions where a budget holder feels that better value can be obtained from sources alternative to those that have been awarded a council contract, approval to use those alternatives must be first obtained from the strategic procurement manager.

## **9.0 Procedures to be followed**

**(See appendix A for flow chart)**

### **Up to £25,000**

- 9.01 Where the estimated value of goods, works and services is expected to be up to £25,000, there are no formal requirements placed on services. They may select the best route they consider is appropriate, bearing in mind the following:
  - 9.01.1 The duty to secure best value in the commissioning of services, ensuring the route chosen is economic, efficient and effective;
  - 9.01.2 The duty to consider social value in the commissioning of services
  - 9.01.3 The expectation to be open and fair in the commissioning of services
- 9.02 Services are welcome to use more formal processes, including the use of quotations, tenders and submission of electronic tenders if they consider it appropriate to do so. They should also give due consideration to any guidance issued by the procurement team to aid understanding in securing value through commissioning.
- 9.03 Where the value of goods or services purchased is in excess of £5,000 and below £25,000, then the service manager will complete a Procurement Notification Form outlining the services and goods purchased, the route to market chosen and the information required for submission in the contract register. This shall be submitted to the procurement team for retention and inclusion on the contract register.
- 9.04 A formal contract is not required (but may be entered into if the service wishes; it would be expected for this to be based on the Council's standard terms and conditions). The agreement between parties shall



be confirmed via a purchase order.

- 9.05 There is no expectation for the service to obtain support from the procurement team in the purchasing of the goods and services unless they wish to do so.
- 9.06 For goods, works and services that are likely to be a regular requirement estimates should be undertaken of the likely annual procurement as set out in 7 above.
- 9.07 The service area should undertake appropriate due diligence before any agreement is entered into.

#### **£25,000 up to £100,000**

- 9.08 Any contract between £25,000 up to £100,000 for the supply of goods, services or the execution of any work will require at least three written quotations to be obtained by the service area.
- 9.09 The service area (or NCSL) will be responsible for undertaking the quotation exercise. They should ensure the exercise is undertaken following the principles outlined in these procedures, the procurement and contract management strategy, and any guidance issued by the procurement team.
- 9.10 Returned quote evaluations should be recorded and all records maintained in line with the Council's retention schedule.
- 9.11 If the service is unable to obtain at least 3 written quotations, then they should complete an exemption form for submission to the Strategic Procurement Manager or the Senior Procurement Business Partner for consideration.
- 9.12 If the service elects to use an open tender, then it must be advertised electronically using the Contract Finder service (available through publication on the Council's procurement system). Services may also elect to use established frameworks.
- 9.13 A contract will not normally be required for one-off goods and purchases, which may be agreed by purchase order. If there is an ongoing service relationship between the Council and the service provider, it is expected that a form of ongoing agreement is entered into, such as a contract or service level agreement, using the Council's standard terms and conditions if the service wishes. Services must ensure appropriate due diligence is conducted on the agreed supplier.
- 9.14 Services may seek advice and guidance from the procurement team and should engage with the procurement team formally if they elect to use formal tenders or a framework.

- 9.15 The service should complete a Procurement Notification Form setting out the outcome of the quotation (or other) process followed, and the decision to award the contract, along with information required to be input on the contract register. Service areas shall be responsible for seeking approval from their Head of Service prior to submitting this form to the procurement team.

### **£100,000 up to the PCR 2015 threshold**

- 9.16 Any contract between £100,000 up to the PCR 2015 for the supply of goods, services or the execution of any work will require at least three tenders to be obtained by the procurement service, or must use a framework, procured in line with public contract procedures.
- 9.17 If an open tender is used must be advertised on the Contract Finder service (via the Council's procurement system). The service shall be responsible for evaluating the tenders and ensuring appropriate due diligence is undertaken.
- 9.18 The relevant head of service (or Executive Director in their absence) in line with their delegation must agree the procurement process and the decision to award the contract.
- 9.19 The service must ensure that an appropriate contract is entered into that is appropriately authorised.
- 9.20 The procurement team will lead on the formal procurement of the goods or services and ensure that procurement procedures are followed.
- 9.21 If the service is unable to comply with the requirement to undertake three tenders or a framework, then an exemption form must be completed and authorised by the strategic procurement manager or senior procurement business partner, and the s.151 Officer.

### **Over PCR 2015 threshold**

- 9.22 Contracts that are greater than the thresholds set by the public contract regulations 2015 must follow a process compliant with those thresholds.
- 9.23 For contracts exceeding the PCR 2015 procurement thresholds the procurement team will advise on the appropriate procedure to be used and will manage the procurement process.
- 9.24 The process for procuring goods and services above this value, and the awarding of the contract must be agreed with the relevant Executive Director (or another Executive Director in their absence)

## **10.0 Market research and pre-procurement engagement**

- 10.01 Access to accurate and relevant commercial intelligence and knowledge of the marketplace is necessary in deciding which procurement option is best. Relevant markets need to be researched and understood, however, care must be taken to ensure this does not distort competition or prejudice any bidder or potential bidder.
- 10.02 There are instances where it is beneficial to undertake pre-procurement market engagement. This may be to better understand the capacity of the market or to allow potential bidders to position themselves appropriately in order to tender effectively. In any case care must be taken and pre-procurement activity should only be undertaken following the guidance of the strategic procurement manager.

### **Joint procurement**

- 10.03 Where specific procedures have not been agreed and procurement is being undertaken jointly with other public sector bodies or organisations, where one of those other bodies or organisations acts as the lead authority, then the contract and procurement procedures for that organisation will apply together with the appropriate legislation.

## **11.0 Framework agreements**

- 11.01 The term of a framework agreement must not exceed four years and, while an agreement may be entered into with one provider, multi-supplier framework agreements can comprise just two suppliers (previously minimum of three).
- 11.02 Call-off contracts based on framework agreements may be longer than four years, and may extend beyond the expiry date of the framework.
- 11.03 Contracts based on framework agreements must be awarded by applying the terms laid down in the terms of the framework agreement. Where direct award is allowable and appropriate this may be utilised if best value can be determined, or in other circumstances a further competition must be undertaken as determined by the framework provider.

## **12.0 Tendering**

- 12.01 Where required, all tenders shall be undertaken using the council's e-procurement system and all communications to tenderers will be made using the system. Any exceptions to this requirement must be approved by the strategic procurement manager.

## **13.0 Advertising a tender**

- 13.01 All opportunities will be published and made visible to all potential providers that are registered on the e-procurement system. This will also facilitate the publishing of opportunities to Contract Finder service where necessitated by the value of the contract. The transparency obligations placed on the council require that if we are advertising a tender over £25,000 it must be advertised on the Contract Finder service.
- 13.02 There may be circumstances however when it will also be necessary to place an advertisement in a local newspaper, trade journal, local partnership network, or social media as appropriate, to invite potential suppliers to register on the e-procurement system. It is also acceptable to notify potentially interested suppliers that the opportunity is available. This will particularly be the case where it is deemed that insufficient suppliers are registered for a specific category of products or services to achieve a reasonable level of competition. Any advertisement shall be raised in conjunction with the strategic procurement manager and will include the website address for the e-procurement system.
- 13.03 Where the contract value exceeds the PCR 2015 threshold the opportunity must not be advertised elsewhere before it has been published through the Contract Finder service. The council's e-procurement system links through to this service.

#### **14.0 Information to potential suppliers**

- 14.01 All potential suppliers must receive the same detailed information that accurately reflects the business requirements. Information given to tenderers that relates to anticipated volumes or value of business is for guidance only. It must be clearly stated that the council will not be bound by this information.
- 14.02 Tenderers must not be informed of the identity of competitors, as this can lead to supplier collusion and cartels and a potential loss of confidence among tenderers.
- 14.03 All questions and answers to clarification points that may be raised by tenderers are to be administered through the e-procurement system to ensure that all tenderers receive the same information. Care should be taken to ensure that further clarification information is made anonymous before sharing with other tenderers.
- 14.04 No meetings or discussions shall take place during the tendering process with tenderers without the prior agreement of the strategic procurement manager.

#### **15.0 Supplier selection**

- 15.01 The council is committed to obtaining value for money through the procurement of all goods, services, works and capital projects. It is essential to ensure that only the most capable suppliers are selected as contractors to the council.
- 15.02 The selection and elimination of suppliers within a procurement exercise can only be made on grounds of capability and that assessment should include a balance of technical, professional and financial issues as appropriate. It is essential that any criteria used to select suppliers are notified to them in advance. This information should be contained within tender documents.
- 15.03 Selection criteria must be proportional and should reflect the level of risk to the council, not imposing arbitrary minimum requirements, as this may have the unintended effect of barring new businesses from bidding. In the spirit of encouraging supplier growth, the supplier evaluation process should not rule out a potential supplier unless there is clear evidence that the supplier's financial position places the council or services at unacceptable risk.
- 15.04 There are two ways in which a selection process can be used and these follow the principles of the PCR 2015. The options are:
- 15.04.1 either, the pre-qualification questionnaire is made available to all suppliers expressing an interest and only the suppliers that meet the required standard are then allowed access to the full tender documents.
  - 15.04.2 or, suppliers are issued with the full Invitation to Tender (ITT) document of which the qualification section forms the first element.

## **16.0 The invitation to tender**

- 16.01 The invitation to tender shall be made available for any supplier via the e-procurement portal, unless it was predetermined that some selection process was to be used to limit the numbers. The invitation to tender must include the main contract terms required and is to specify:
- 16.01.1 that no tender will be considered unless it is submitted using the e-procurement system.
  - 16.01.2 the period for which a tender must remain valid
  - 16.01.3 whether variant tenders will be considered and if so in what form
  - 16.01.4 whether a bond or parent company guarantee will be required
  - 16.01.5 professional, employer's and public liability and other insurance required

16.01.6 that the council is not obliged to accept the lowest (or highest as the case may be) or any tender.

16.01.7 That suppliers enter the tender process and prepare submissions at their own risk

## **17.0 Receipt of tenders**

17.01 All tenders will be managed in accordance with the defined procedures on the e-procurement system. Submitted tenders will be dealt with as soon as possible after the closing date and time for receipt. Tenders will not be accepted after the closing date and time for receipt.

17.02 Where an error is discovered in tender documents before the closing date/time, all suppliers will be notified via a clarification on the e-procurement system of the correction and if necessary the closing date and time may be extended. If a supplier has already submitted their tender, they must be allowed an opportunity to submit a new tender before the closing date/time.

17.03 After the opening of tenders, if there is an obvious error in a tender submitted (for example the result of a calculation is incorrect or there is a typing error in a value), the strategic procurement manager may allow the supplier to be contacted and afforded the opportunity to correct the error or withdraw their submission. All communication must be undertaken through the e-procurement system.

## **18.0 Tender evaluation**

18.01 Evaluation of tenders must be carried out by at least two suitable persons capable of evaluating the tenders, if necessary including (in addition) external advisors. Where external advisors are to be appointed they are normally to be involved at the contract specification (pre tender) stage of these procedures. The evaluation process must be objectively followed using a team approach and by moderating scoring. All evaluation will either be carried out on the e-procurement system or if this is not suitable then an appropriate spreadsheet will be used and the records of the evaluation process retained for audit purposes.

18.02 The purpose of the evaluation is to identify the most economically advantageous tender, which will be a balance of cost and quality. The service area must draw up the evaluation criteria and methodology early in the process and this will be shared with the tenderers as part of the e-procurement process. It is good practice to allot a weighting system to the scoring to enable greater emphasis to be attributed to the key outcomes required.

18.03 The evaluation criteria should support the Procurement Strategy

outcomes however must be relevant and proportionate and linked to the subject matter of the contract These criteria will often include the following:

Quality - Technical merit, aesthetic and functional characteristics, environmental characteristics, after sales service, technical assistance, delivery date and delivery period and period of completion.

Costs - Whole life cost, including price, running costs, maintenance, consumables, spares and disposal costs.

Social value – how the contractor envisages delivery of the contract will enhance the economic, social and environmental well-being of the area and take steps to ensure that the delivery of the contract is sustainable

## **19.0 Clarification procedures and post-tender negotiation**

19.01 All supplier tender clarification should be controlled and led by the head of service with delegated procurement authority on advice from the procurement team. The head of service should determine a strategy for the clarification, irrespective of whether it concerns a new purchase, a renewal, or a supplier generated change. The head of service may decide to involve other specialists as appropriate.

19.02 Neither good practice nor the EU Directives permit price negotiation, however clarification is utilised to explore and understand the technical aspects of a tender. The result of clarification discussions may be an adjustment to the cost proposal.

19.03 Where clarification discussions do not lead to an agreement between the supplier and the council it may well be necessary to undertake a second procurement exercise and re-engage the market.

## **20.0 Acceptance of tenders**

20.01 Where an open tender process is undertaken and less than three valid tenders are received then no contract shall be awarded until a report detailing the results of the tender evaluation has been considered by the strategic manager procurement manager.

20.02 In these cases the head of service or director shall be authorised to accept the most economically advantageous tender where one tender achieves an overall highest combined quality and cost score and after taking legal advice on the impact of PCR 2015 if appropriate.

20.03 Consideration must also be given to the original estimate of the value of the contract and an explanation given for any significant difference. A report summarising these findings and recommending which (if any) of the tenders is to be accepted and on what terms must then be submitted to the director or head of service and the strategic

procurement manager.

20.04 Appropriate due diligence should be undertaken before contract award.

## **21.0 Commencement of work**

21.01 Except in cases especially authorised by the strategic procurement manager, contractors shall not be allowed to commence work until the contract has been signed and, where required, the necessary bond has been secured or other security accepted.

## **22.0 Award of contracts**

22.01 When a contract is awarded, notification must be given to the successful supplier and the unsuccessful suppliers. For successful suppliers the notification must state the basis of the acceptance.

22.02 Where the contract is over threshold the unsuccessful supplier notification should comply with Reg 86 of PCR 2015 and provide the relative advantages of the successful tenderer as compared to their bid.

22.03 In below threshold it would be best practice to mirror the principles of the information provided in Reg 86.

22.04 If required under PCR 2015 a 10-day standstill period must then be observed between notification of award and entering in to a contract.

22.05 Those tenders where PCR 2015 does not apply the council should follow the best practice of a 10-day standstill period where possible. The strategic manager and service area executive director or head of service (as relevant to the value of the tender) shall be required to approve any standstill less than 10 days.

22.06 The notification of award must make clear that it is subject to a formal contract and that any challenge may negate the ability of the council to enter in to such a contract.

22.07 For council contracts only, if awards are of key decision value the notice of award shall state it is subject to cabinet approval, unless delegation has already been sought.

22.08 For council contracts only, any contract award should have reference to the constitution and key, material and significant decisions requirements.

## **23.0 Abandonment of Procurement**

23.01 In accordance with the approval requirements for entering contracts as above, the relevant service manager, head of service or Executive



Director may agree to abandon the procurement where it is appropriate to do so; for example, that the goods or services are no longer required; the market is unable to deliver the goods or services in accordance with the Council's expectation, or an alternative route to market is more appropriate. Abandonment should only take place following consultation with the strategic procurement manager and the legal team.

23.02 If the goods or services are subject to a future tender exercise following abandonment, any suppliers who had submitted bids or tenders should be notified and provided opportunity to participate in the future procurement exercise.

## **24.0 Contract extension and novation**

24.01 Contracts may be extended only if the original contract allowed this option.

24.02 Prior to a contract extension or novation the service area shall ensure:

24.02.1 there is continued need for the contract

24.02.2 there is evidence of good performance to date by the existing supplier, in line with any service level agreement or performance indicators in the contract

24.02.3 that value for money is still being obtained with the existing contractor in the current market and other consideration of options

24.02.4 appropriate authority is in place for example an earlier key decision for award of contract covered the extension period. If not authority shall be obtained before extension awarded

## **25.0 Variations**

25.01 Contracts may be varied during their term where this was allowed under the original contract or terms.

25.02 If the effect of the variation is to deliver savings to the Council, or to increase costs to the Council, then it must be approved by

25.02.1 the service manager if less than £25,000;

25.02.2 the head of service if £25,000 and up to £100,000

25.02.3 the head of service (or Executive Director in their absence) in line with their delegation if £100,000 and up to PCR thresholds

25.02.4 the Executive Director where thresholds and above.

25.03 If the effect of the variation is to increase cost or deliver savings of more than £500k on a whole life basis, then the variation must be subject to cabinet approval

## **26.0 Transparency requirements**

26.01 The details of all contracts awarded by the council will be held and maintained by the procurement team and these details shall be made publicly available in accordance with the Local Government Transparency Code 2015.

26.02 To facilitate this requirement, the details of any contract entered into other than through the e-procurement system will be provided to the procurement team by service areas if the value is in excess of £5,000 via the Procurement Notification Form

## **27.0 Form of Contract**

27.01 Where a formal contract is entered into, this should be signed by at least two authorised officers or made under the seal of the council attested by at least one authorised officer.

27.02 Every contract which exceeds PCR 2015 procurement limits in value shall be sealed.

27.03 NCSL contracts shall not require a council seal however should be signed in accordance with the company's own scheme of delegation.

27.04 The service area contract manager shall be responsible for ensuring the content of the contract is adequate, seeking legal advice if required.

27.05 The contract must, as a minimum, contain the following:

27.05.1 the council's standard purchase terms and conditions, together with any special terms agreed through the tender process,

27.05.2 General Data Protection Regulation (GDPR) required clauses as appropriate

27.05.3 a clause stating that the supplier may not sub-let, assign or transfer to any person/legal entity all or part of the contract without the written permission of the council

27.05.4 the details of the goods, services or works to be supplied,

27.05.5 the price to be paid including any discounts,

27.05.6 the period for compliance/term of the contract,

27.05.7 any insurance requirements,

27.05.8 termination rights.

## **28.0 Liquidated damages and security**

## **Liquidated damages**

28.01 Consideration is to be given for every contract which is estimated to exceed £100,000 in value or amount (and in any other contract of a lesser amount if the strategic procurement manager considers it appropriate), for the execution of works (or where appropriate for the supply of goods or materials by a particular date or series of dates) shall provide for the payment of liquidated damages by the contractor in case the terms of the contract are not duly performed.

## **Breach of contract**

28.02 In every written contract for the supply of goods or materials the standard procurement terms and conditions shall include a clause securing that, should the contractor fail to deliver the goods or materials or any portion thereof within the time or times specified in the contract, the council, without prejudice to any other remedy, shall be at liberty to determine the contract either wholly or to the extent of such default in breach of contract.

28.03 In such case as set out in 26.02 above, the council may purchase other goods or materials as the case may be, of the same or similar description to make good such default or, in the event of the contract being wholly determined, the goods or materials remaining to be delivered.

28.04 The clause shall further secure that the amount by which the cost of so purchasing other goods or materials exceeds the amount which would have been payable to the contractor, shall be recoverable from the contractor.

## **Performance bonds**

28.05 Where a tender is £100,000 or more in value or amount and is for the execution of works or for the supply of goods or materials by a particular date or series of dates, a performance bond or other sufficient security amounting to 10% of the contract sum for the performance of the contract must be considered.

28.06 An assessment must be made to evaluate the risk and where this risk is above the council's risk appetite a performance bond of other sufficient security amounting to 10% of the contract sum for the performance of the contract shall be obtained.

28.07 In other cases, a bond shall be obtained where the business relationship and procurement manager deems it necessary.

## **29.0 Prevention of bribery and corruption**

- 29.01 Members and officers involved in the letting of contracts and the purchase of goods and services must ensure they comply with the relevant code of conduct and shall state at the earliest stage of the procurement procedure if they have any foreseeable conflicts of interest.
- 29.02 Any gift offered, either during a contract process or prior to or after the procedure must be reported in accordance with the council's procedures for these matters. If any person believes such a gift to have been offered as an inducement the appropriate member of the corporate leadership team and the monitoring officer are to be informed immediately.
- 29.03 Every written contract shall include a clause to secure that the council shall be entitled to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation if the contractor shall have:
- 29.03.1 offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the council; or
  - 29.03.2 for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the council; or
  - 29.03.3 if the like acts shall have been done by any person employed by the contractor or acting on his or her behalf (whether with or without the knowledge of the contractor); or
  - 29.03.4 if in relation to any contract with the council the contractor or any person employed by him or her or acting on his or her behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or Bribery Act 2010 or any amendment or re-enactment of them; or
  - 29.03.5 shall have given any fee or reward the receipt of which is an offence under subsection 2 of Section 117 of the Local Government Act 1972; or
  - 29.03.6 shall have offered, promised or given a bribe (a financial or other advantage) to another person to induce that person to perform improperly a relevant function, which is an offence under the Bribery Act 2010.

### **30.0 Review of the procedures**

- 30.01 The Chief Finance Officer will review and amend these contract

procedures periodically as appropriate and is authorised to make changes that are minor or reflect new or updated legislation.

- 30.02 Major changes to the contract procedures, such as revision of values determining procurement process are delegated to the Chief Finance Officer in consultation with the appropriate portfolio holder.