

**Chiltern District Council
and
South Bucks District Council**

CONTRACTS PROCEDURE

RULES

November 2018

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A INTRODUCTION

A1 Purpose

1. The purpose of these Contracts Procedure Rules is to set out the Councils' approach to dealing with all aspects of Procurement.
2. Procurement includes preparing for, entering into, managing, extending, varying and terminating contracts for the supply of goods, services and works.

These rules do not apply to:

- Contracts for employment.
 - The recruitment of temporary / agency staff.
 - The purchase of land / property.
3. These rules are designed to ensure that the Councils spend public money wisely, fairly and transparently.

A2 Definitions

4. For the purposes of these rules a contract is:
*"an **agreement** having a lawful object entered into voluntarily by two or more parties, each of whom intends to create one or more legal obligations between them. The **elements** of a contract are "offer" and "acceptance" by "competent persons" having legal capacity, who exchange "consideration" to create "mutuality of obligation. Proof of some or all of these elements may be done in writing, though contracts may be made entirely orally or by conduct."*
5. The 'EU Procurement Rules' are the Public Contracts Regulations 2015 that enact The Public Contracts Directive 2014/24/EC into UK Law.

A3 Requirement to Follow

6. These Contracts Procedure Rules must be followed by all employees, agency staff, contractors and councillors when dealing with all aspects of Procurement on behalf of the Council(s).
7. Furthermore, if a Councillor or Officer becomes aware of any activities or actions that do not comply with these rules they must inform the Director of Resources, as soon as they are aware.
8. It is a disciplinary offence if employees do not comply with these Rules or are aware of non-compliance but do not tell the Director of Resources.

A4 Contract Owners

9. A Contract Owner is the person who has overall responsibility for a contract.
10. Every contract must have a named Contract Owner, who is responsible for:
 - Complying with these Contracts Procedure Rules.
 - The specific method and activities the Councils' use to prepare for, enter into, manage, extend, vary and terminate a contract.
 - Due diligence to verify that contracts the Councils' become party to, but did not award, are suitable.
 - Keeping records to give a transparent, comprehensive and complete audit trail for the duration of each contract.
 - Writing contract award reports.
11. The Head of Service will be the contract owners for all contracts that fall within their remit, unless they specifically delegate this role, or aspects of it, to someone else.

A5 Declaring an Interest / Gifts and Hospitality

12. When a councillor or employee becomes aware of any pecuniary (monetary) interest they have, directly or indirectly, in any contract the Councils intend to award, or have already awarded they must declare their interest in writing by sending a 'declaration of interest' to the Chief Executive. The Chief Executive will keep a record of all 'declarations of interest'.
13. An indirect interest is when an employer, sponsor or relative of a councillor or employee has a pecuniary (monetary) interest in any contract the Councils intend to become party to or are already party to. A "relative" could be a partner (married or living with), a parent, a son or daughter, a stepson or stepdaughter, the son or daughter of a partner, and / or a sibling.
14. Councillors and officers also need to be very wary of accepting gifts / hospitality from suppliers or potential suppliers in order to avoid accusations of favouritism / bribery. Any offers must be recorded in the corporate gifts and hospitality register, and advice must be taken before accepting any non trivial gifts / hospitality.

A6 Exemptions

15. The Councils must comply with these Contracts Procedure Rules at all times. However there are sometimes valid reasons why an exemption from one or more elements of these rules is required.
16. All exemptions must be formally approved by Management Team, and the appropriate Portfolio Holder informed.

17. Possible reasons for an exemption include:
- **Urgency:** do not have sufficient time to comply with all of these rules.
 - **Buying at auction:** an auction is the only source.
 - **No genuine competition:** only one organisation or individual can realistically supply.
 - **Advantageous knowledge:** an external advisor (such as counsel) or organisation has specific specialist knowledge which makes them most suitable for the appointment (For example they have previously been involved in the specific case where support is required again).
 - **Advantageous terms:** an organisation offers terms that are significantly better than the industry norm and is unlikely to repeat these terms.
 - **Failed competitive process:** when a Contract Owner stops a competitive quotation or tender process and decides there is a need to negotiate because no-one submits a quotation or a tender, or after evaluation no quotation or tender is appropriate.
 - **Collaborative procurement:** when another party is leading on the procurement it is normal practice that the other party's Contracts Procedure Rules are followed.
18. However in all cases the EU Procurement Rules must be complied with in full when they apply.

A7 Variations to the Contracts Procedure Rules

19. Only Full Council has the authority to amend these Contracts Procedure Rules.

B SUMMARY OF CONTRACTS PROCEDURE RULES

Total Spend Estimate (C1) Excluding VAT	Advertising (C6) (Minimum Requirement)	Procedure (C7)	Contract Award (C13) (Provided budget already approved)	Record Keeping (C14)	Contract Review (D2)	Vary / Extend a Contract (E)
Up to £10,000	Up to Contract Owner.	Minimum of one Quotation. Provided they believe this to offer best value.	Contract Owner	Records stored locally.	At least every 12 months.	Up to an extra £2,000.
£10,000 to £25,000	Up to Contract Owner.	Minimum of two Written Quotations.	Head of Service + another officer	Contract recorded in contract register. Records stored locally.		Up to an extra 25% increase in value.
£25,001 to £50,000	Contracts Finder.	Request for Quote (RFQ). Minimum of three Quotations.	Head of Service + another senior officer.	Contract recorded in contract register. Records stored centrally.		Up to an extra 25% increase in value To no more than the EU Threshold.
£50,001 to < EU Threshold	Contracts Finder.	Invitation to Tender (ITT). Minimum of four Formal Sealed Written Tenders.	Head of Service + Director / Chief Exec. Councils' common seal.			
Above EU Threshold	Contracts Finder. Official OJEU Notice.	EU procurement rules.	Head of Service + Director / Chief Exec + Portfolio Holder / Cabinet. Councils' common seal.			

The EU Thresholds from 1 January 2018 are £181,302 (supplies & services) and £4,551,413 (works). They are set once every two years.

C PROCEDURES FOR AWARDING CONTRACTS

C1 Total Spend Estimate

20. The amount a Contract Owner estimates the Councils' will spend on the same or similar goods, works or services, over the duration of a contract determines which procedure or procedures a Contract Owner must use.
21. TOTAL SPEND ESTIMATE = Estimated Spend over the Full Length of the Contract.
Estimated Spend - This is the total value of all purchase likely to be made under the contract, excluding VAT. This includes all organisations that are party to the agreement eg CDC + SBDC if a joint contract.
Note: A contract owner must not disaggregate contracts to avoid following these rules ie they should not just let a contract for stationery for one team, they need to consider the total spend on stationery across the Council(s).
Full Length of Contract – This includes any potential extensions or options that are likely to be included in a contract. If a contract does not have a defined term, a reasonable estimate of the likely length of the arrangement should be used.
22. If the procurement is likely to result in income to the Council (ie the contract is for the sale / disposal of an item) then the procedure is determined by the likely Value of the contract, as opposed to the likely Spend.
23. A Contract Owner can use a procedure they would normally use to enter into a contract in a higher spend threshold to enter into one in a lower spend threshold, but not the other way around. For example they could use the tender procedure for contracts with a total spend estimate of £50,001 to EU Threshold to enter into contracts with a total spend estimate of less than £50,000.

C2 Preparation

24. A Contract Owner must prepare thoroughly before they advertise a contract opportunity, although the amount and type of preparation should be commensurate with a contract's complexity and total spend estimate. In particular they need to be clear on the deliverables they expect from the contract.
25. If a contract or framework agreement for services, or primarily for services, is likely to have a total spend estimate equal to or greater than EU thresholds a Contract Owner must comply with the Public Services (Social Value) Act 2012, and start that compliance as soon as the Councils' are aware they intend to award a contract.

C3 Contract Terms and Conditions

26. All Council awarded contracts must include the Council's standard terms and conditions.

27. The exceptions to this are when:
- A contract has a total spend estimate of less than £25,000 and the contract does not pose a significant risk to the Council.
 - There are changes to the Council's terms and conditions and these are agreed by the Head of Legal and Democratic Services.
 - The norm is for organisations and individuals to use their own terms and conditions (for example the supply of utilities), and there is little or no possibility of being able to use alternative terms and conditions, and the Councils' Head of Legal and Democratic Services agrees these terms.
28. Note. If a contract is being awarded under a framework, the Councils will follow the framework terms and conditions.
29. Each contract must allow a Contract Owner to terminate a contract at any time if a supplier's performance does not discharge their contractual responsibilities.

C4 Bonds / Parent Company Guarantees

30. When contracting it used to be common practice to insist on either a bond or a parent company guarantee, in order to provide financial compensation in the event of contractor failure. However this often resulted in the price of a contract increasing, as the contractor would pass on the cost of the bond to the purchaser via an increased contract price.
31. The Councils therefore do not have any specific requirements for bonds or parent company guarantees to be in place. Instead for contracts over £50,000, a Contract Owner should, in consultation with a second officer, consider whether a bond or parent company guarantee would be beneficial or not. It is then for the Contract Owner, if they consider these appropriate, to determine the level and nature of the bond or parent company guarantee.

C5 Use of Frameworks

32. A framework is an agreement with suppliers to establish terms governing contracts that may be awarded during the life of the agreement. In other words, it is a general term for agreements that set out terms and conditions for making specific purchases (call-offs).
33. Often a framework is let by one party, with the scope for other organisations to call off purchases as and when required.
34. There are a number of organisations that let frameworks that any local authority can use. For instance
- Crown Commercial Service
<https://www.gov.uk/government/organisations/crown-commercial-service>
 - ESPO
<https://www.espo.org/Home>

- SCAPE
<http://www.scapegroup.co.uk/services/procure/frameworks>

35. Frameworks can be effective methods of procuring goods and services as they:
- Avoid having to carry out a full tender process ourselves, saving time and money.
 - Can provide better value as they can benefit from aggregated economies of scale.
36. However utilising a framework normally requires us to sign up to the pre-existing terms and conditions / specifications. It is therefore important to check that the framework fully meet our needs.
37. The Councils support the use of Frameworks. However the Contract Owner should still endeavour to obtain a number of quotes / consider a number of options in order to evaluate whether a deal via a particular framework represents good value for money.

C6 Advertising Contract Opportunities

38. A Contract Owner must advertise contract opportunities when the total spend estimate is more than £25,000. They can advertise opportunities with lower total spend estimate if they consider it to be economically advantageous to the Council(s).
39. The primary purpose of an advert is to:
- Attract the interest of organisations and individuals.
 - Inform potential bidders concisely and clearly about the opportunity, and
 - Stimulate them to compete with their best terms.
40. As a minimum all adverts must be shown on the Contracts Finder website and the Councils e-tender software.
41. The Contract Owner may also decide to advertise in:
- A local paper
 - An appropriate professional journal or journals
 - Other suitable websites.
42. A Contract Owner must place an official Notice in the OJEU to advertise an opportunity with a total spend estimate that is more than the thresholds for the EU Procurement Rules. Contract Owners should also place voluntary OJEU notices when they consider it appropriate to do so.

C7 Requesting Quotations and Tenders

Quotation (Up to £10,000)

43. For a total spend estimate of up to £10,000 the Contract Owner must obtain written evidence (for example a digital copy of an email or webpage) of the following:
- Description of goods, services or works

- Contract terms and conditions (they could be a seller's terms of sale)
- Price and delivery.

44. A Contract Owner only has to obtain one quotation for goods, services or works costing up to £10,000, provided they believe this to offer best value. If in doubt additional quotes should be obtained.

Written Quotations (£10,000 to £25,000)

45. For a total spend estimate of £10,000 to £25,000 the Contract Owner must obtain written evidence (for example a digital copy of an email or webpage) of the following:

- Description of goods, services or works
- Contract terms and conditions (they could be a seller's terms of sale)
- Price and delivery.

46. A Contract Owner must use reasonable endeavours to obtain at least 2 quotations for goods, services or works costing £10,000 to £25,000.

Written Quotations (£25,001 to £50,000)

47. For a total spend estimate of £25,001 to £50,000 the Contract Owner must produce:

- a Formal Request for Quotation (RFQ), and
- a specification

and request that potential bidders formally submit quotations.

48. A Contract Owner must use reasonable endeavours to obtain at least 3 quotations for goods, services or works costing £25,001 to £50,000.

Tenders (Over £50,000)

49. A tender should include more detail and be more complex than a quotation. It is likely to require considerably more time to formulate, complete and evaluate.

50. There are three different sets of circumstances that determine the type of tender a Contract Owner can invite from those who express an interest in a contract opportunity.

- **Non-EU Tender** is when a total spend estimate is less than the spend thresholds to comply with the EU Procurement Rules and a Contract Owner must comply with these Contracts Procedure Rules.
- **EU Tender** is when a total spend estimate is equal to or more than the spend thresholds for the EU Procurement Rules and a Contract Owner must comply with these Contracts Procedure Rules and the EU Procurement Rules.
- **Single Tender** is when a Contract Owner has a valid exemption from some of these Contracts Procedure Rules because there is only one organisation or individual able to supply what they intend to buy. A single tender is only different from a normal tender in that a Contract Owner will invite just one organisation or

individual to tender and they are very likely to negotiate. All other aspects must remain the same as any other tender.

51. For a total spend estimate of over £50,000 the Contract Owner must produce:
 - An Invitation to Tender (ITT) document. This must include:
 - Instructions on how to tender, including timings,
 - details of the evaluation process and evaluation criteria,
 - a note to say that we are not bound to accept the lowest or any tender.
 - A specification
 - Contract terms and conditions
 - Tender return forms or schedules – price and quality schedules and a Non-Collusive Tendering Certificate.
52. A Contract Owner shall use reasonable endeavours to obtain at least 4 tenders for goods, services or works costing over £50,000.
53. Note: In the case of EU tenders, if we use the restricted procedure and want to limit the number of providers we intend to invite to tender, we have to invite at least five providers to tender.

C8 Selecting Organisations to Quote

54. The Contract Procedure Rules provide a minimum number of quotes / tenders to be obtained. In order to select which organisations are to be invited to quote professional judgement should be used.
55. Factors that can be used to select organisations to be invited to quote include:
 - The company has previously worked with CDC / SBDC, and did a good job.
 - The company is registered on ConstructionLine and has therefore already had its suitability assessed.
 - The company has been recommended by professional contacts (for instance has been used by other local authorities).
 - Random selection (ie 50 companies have expressed an interest in an opportunity and 5 of these are selected at random to quote).
56. For larger contracts part of the selection / evaluation process should include evaluation of the financial standing of the contractors.

C9 Receiving Quotations and Tenders

57. Quotations and tenders must be submitted in the following manner.

Spend Threshold	Method	Sent To
Written Quotation (Up to £50,000)	As an attachment to an email, a copy of a webpage, by e-tender software, or by post.	Contract Owner
Tender (Over £50,000)	By e-tender software or in a plain sealed envelope.	Director of Resources

58. A plain sealed envelope must only have written on it:
- The name of the person to whom the Quotation / Tender is to be returned;
 - The procuring Council's address;
 - The title of the contract; and
 - The word "quote" or "tender".
59. On receipt Quotations and Tenders must not be opened, and must immediately be passed to the Contract Owner / Director or Resources as appropriate.
60. After 18 October 2018 full requirements for e-communications apply to all above EU threshold procurements.

C10 Opening Quotations and Tenders

61. Quotations (under £50,000) can be opened by the Contract Owner or his / her nominee.
62. Tenders (Over £50,000) must not be opened until the submission deadline has passed.
63. Tenders (Over £50,000) must be opened by the Director or Resources or his / her nominee in the presence of at least 2 other members of staff or Councillors, including a representative from Finance.
64. Each Tender shall be date stamped and logged on a Quotation / Tender Receipt form and this form shall be signed by each person present at the opening.

C11 Evaluation of Quotations and Tenders

Up to £10,000

65. For contracts with a total spend of £10,000 or less a Contract Owner can evaluate quotations on their own.
66. However, they must be able to explain how and why, with supporting evidence, they decided to recommend the award of a contract to a specific organisation or individual.

Over £10,000

67. A Contract Owner must assemble an evaluation team. The Team must have no less than:
- Two members of staff or Councillors to evaluate quotations (£10,000 to £50,000)
 - Three members of staff or Councillors to evaluate tenders (over £50,000).
- Nb: Normally officers do the detailed evaluation of the quotations / tenders. However Councillors will occasionally evaluate elements of the quotations / tenders.
68. The primary concerns of an evaluation team must be:
- **Consistency:** the team must apply the evaluation process and criteria consistently to each quotation or tender.
 - **Suitability:** the team must determine which organisation or individual has submitted the most economically advantageous quotation or tender and is therefore the most suitable to supply the Councils. As part of this it is acceptable to consider the full costs over the expected life of the contract.
 - **Criteria:** the team must evaluate the contents of each quotation or tender against evaluation criteria given in the relevant 'Request for Quotation' or 'Invitation to Tender'.
 - **Consensus:** the team must score the bids in line with the evaluation criteria and must either award to the contractor with the highest score or abort the tender. They should strive to achieve a consensus for the scoring. If they fail to achieve a consensus then a majority must prevail.

C12 Negotiation

69. A Contract Owner can only negotiate the terms of a contract when:
- Management team has agreed this, and either
 - The total spend estimate is less than that required to comply with the EU Procurement Rules, or
 - They have valid grounds to negotiate, as described in the EU Procurement Rules.
70. A Contract Owner must make sure there are formal written notes of any negotiations.
71. Note: The European Council has stated in its communications that in the open and restricted procedures all negotiations on fundamental aspects of contracts, variations in which are likely to distort competition, in particular on prices, are ruled out. Discussions may be held only to clarify or supplement the content of tenders or the requirements of the contracting authorities and provided this does not involve discrimination.

C13 Contract Award

72. The table below details those who are eligible to award contracts, depending on the total spend estimate.

Spend Threshold	Evaluation	Award Decision (Provided budget already approved)
Up to £10,000	Contract evaluation to be <u>formally</u> recorded in writing by the Contract Owner.	Contract Owner
£10,000 to £25,000		Head of Service + another officer
£25,001 to £50,000	Contract Award Report. See below	Head of Service + another senior officer.
£50,001 to EU Threshold		Head of Service + Director / Chief Exec.
Over EU Threshold		Three stage sign-off: - Head of Service + - Director / Chief Exec + - Portfolio Holder / Cabinet

Contract Award Report (Over £25,000)

73. The Contract Owner is responsible for preparing a contract award report for contracts with a total spend estimate of more than £25,000.
74. The Contract Award report must be considered by all the Officers / Councillors who have the authority to award the contract, prior to the execution of the Contract.
75. A contract award report is an accurate, comprehensive and concise summary of the activities, decisions, results and recommendations a Contract Owner instigates:
- From the time the Council(s) know they intend to enter into a contract; to
 - The signing of a contract.
76. Each contract award report must provide sufficient information in the body of a report and / or in accompanying documents for the person who will award a contract. Sufficient information is when the person to award a contract is confident that the contract in question complies with these Contracts Procedure Rules.
77. The scope, content and approvals for each contract award report depend on the total spend estimate for a contract and its potential risks.

Sealing Contracts (Over £50,000)

78. Contracts with a total spend estimate of more than £50,000 must be executed under the Councils' common seal. Affixing its common seal is how the Councils formally execute contracts and there are specific rules that govern its use.

C14 Record Keeping

79. A Contract Owner must keep records on the decisions and activities they take concerning how they prepare for, enter into, manage, extend, vary and terminate each of the Councils' contracts.
80. These records must provide complete, comprehensive and concise evidence of how and why contract decisions were made. A transparent audit trail is a pre-requisite for all contracts.
81. A Contract Owner must, as a minimum, keep the following:
 - The Request for Quotation (RFQ) / Invitation to Tender (ITT)
 - All the documents that comprise a quotation or tender
 - The Contract Award Report
 - The documents that make up the formal contract
 - Any formal performance review reports
 - Details of any variations and extensions to the original contract
 - Details of any contract terminations with reasons.
82. For contracts above the EU thresholds, a report complying with Regulation 84 (Recording of Prescribed Information) of the Public Contract Regulations 2015 is required.
83. These records need to be kept for the duration of the contract, plus 6 years (unsealed contracts) or plus 12 years (sealed contracts).
84. For those contracts with an estimated lifetime spend of less than £5,000 a Contract Owner may store these records locally.
85. For those contracts with an estimated lifetime spend of £5,000 - £25,000 a Contract Owner may store these records locally. However they must notify Finance so that summary details are included in the contracts register.
86. For contracts with an estimated lifetime spend of more than £25,000 these records must be stored in the central contracts register. In addition they must notify Finance so that summary details are included in the contracts register.

D PROCEDURES FOR MANAGING SUPPLIER PERFORMANCE

D1 Contract Start Up

87. A Contract Owner should not normally purchase or receive goods, services or works through a contract before it is signed. If there is a reason for doing this, it must be formally documented.
88. If appropriate when starting a contract a Contract Owner should define a start up period, relevant to the spend and complexity of a contract, in which there is a more intense focus on making sure the contract performs to achieve expectations.

D2 Managing Performance During the Contract Period

89. A Contract Owner must ensure, as far as possible, the Council(s):
 - Receive what they have agreed to pay for;
 - Support a supplier or suppliers to achieve satisfactory results; and
 - Enable a supplier or suppliers to improve performance and increase the benefit of what they have agreed to supply.
90. A Contract Owner shall formally, regularly and consistently meet with the contractor to discuss all aspects of performance.
91. It is recommended that contract reviews take place at least every 12 months

D3 Contracts Due to Finish

92. To ensure that the Council(s) always have suitable contracts in place for the goods, services and works that they need to buy, the Contract Owner shall take appropriate action to re-let or renew contracts in good time before the expiry of the existing contract(s).
93. If there are any concerns about the ability to re-let or renew contracts before the expiry of existing contracts these need to be raised with the Director of Resources.

E PROCEDURES FOR VARYING / EXTENDING CONTRACTS

E1 If a Contract has a Variation and/or an Extension Clause

94. If a contract has a variation and / or an extension clause then a Head of Service or Director / Chief Exec can vary and / or extend it within the bounds of the terms in such a clause provided they believe this will provide best value for the Council(s).

E2 If a Contract does not have a Variation and/or an Extension Clause

Within Criteria

95. When the terms of the variation and / or extension clause are not specific, or they are not present in a contract, a Contract Owner can request a variation and/or an extension to a contract if the changes they intend to propose comply with the following criteria.

Original Contract Spend	Criteria
Up to £10,000	Up to an extra £2,000.
£10,001 to £50,000	Up to an extra 25% increase in value.
£50,001 to EU Threshold	Up to an extra 25% increase in value to no more than the EU Threshold
Above EU Threshold	Comply with the EU Procurement Rules

96. In which case a Contract Owner must document the reasoning for each variation and / or extension and get this signed off by a Head of Service or a Director / Chief Exec.

Outside Criteria

97. If a Contract Owner wishes to vary and / or extend a contract by more than the above criteria, this needs to be formally approved by Management Team.

E3 Recording Variations and/or Extensions

98. A Contract Owner must store details of each variation and / or extension, for all contracts with a new total spend estimate of more than £25,000, in the central contracts register.