

Annex 2.7: CONTRACT PROCEDURE RULES
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1. Interpretation

- 1.1. The Council's Contract Procedures Rules (the rules) are designed to ensure that proper stewardship and probity are maintained when the Council, through its Approved Officers obtains goods and/or services at Best Value from purchasing arrangements. These rules should be read in conjunction with the Council's Financial Regulations which set out mandatory financial procedures to be followed. These rules are designed to ensure compliance with the Council's Constitution, Council policies and English law.
- 1.2. The Director (Corporate Services) and the Assistant Director (Corporate Services) shall be responsible for monitoring compliance with these rules and shall report any contravention to the Monitoring Officer.
- 1.3. Officers who do not comply with these rules may be subject to disciplinary action.

2. Introduction

- 2.1. These Contract Procedure Rules are made under Section 135 of the Local Government Act 1972. They include provision for competition and regulate the manner in which procurement and tendering take place within the Council.
- 2.2. These rules have five primary objectives:
 - To ensure that the Council obtains Value for Money and deploys resources to achieve its corporate objectives
 - To ensure that the Council complies with laws relating to public procurement
 - To safeguard Members and Officers of the Council from improper allegations of dishonesty or corruption
 - To ensure that fairness and transparency remains at the forefront of all procurement activity undertaken by Officers and approved by Members
 - To ensure that any risks associated with commencing procurement activity and entering into contracts are assessed as part of the procurement process.
- 2.3. These rules do not provide guidance on how to procure goods and/or services but set out minimum requirements that must be followed. Further information and guidance is provided in the council's Procurement Strategy.

3. Scope and application

3.1. These rules apply to all procurement activity undertaken by or on behalf of the Council unless it is subject to an *Exemption* (as set out in Section 11).

3.2. These rules **do not** apply to:

- Employment contracts
- Contracts relating solely to the purchase or sale of interests in land
- Contracts for retention of external legal advisors/ legal counsel and the appointment of expertwitnesses in legal proceedings
- Service level agreements setting out the conditions that the Council applies to its funding of particular voluntary sector bodies, as outlined in Partnerships Register.
- Tenders or quotations which have been invited on behalf of any consortium, association or similar body of which the Council is a member, or on behalf of any other local authority, or public body, with whom the Council has a contract, agency agreement, partnering agreement or similar, provided that the approved procedure of any such body for the invitation of tenders and quotations has been followed
- Where properly concluded Framework Agreements or Dynamic Purchasing Systems are relied upon but only where the guidance and award criteria set out for the particular Framework Agreement or Dynamic Purchasing System is strictly adhered to in the engagement of the contractor or supplier.

3.3. Any third party (e.g. a consultant) who is engaged in the letting, management or supervision of a contract on behalf of the Council must comply with these rules as if they were Council officers.

4. Review and amendment

4.1. These rules shall be reviewed at least every five years by the Monitoring Officer in consultation with the Director of Corporate Services. The Monitoring Officer shall make changes to the Contract Procedure Rules in accordance with the Council's Constitution. Any amendments will be subject to approval by Full Council.

5. General principles

5.1. Financial thresholds and minimum requirements are shown in the table at section 9.

5.2. Contracts of a value of **£25,000 or more** shall be in writing and include contract clauses relevant to the procurement issued by Legal Services. Contract performance can be commenced until it has been signed by all

parties and a complete copy (inclusive of all appendices, maps etc) submitted to legal services for safe storage.

5.3. As a minimum, all contracts with a value of £25,000 or more shall include clauses which set out:

- The nature of the works, supplies, goods, services, service concession, material, matters or things to be carried out or supplied
- The time within which the contract is to be performed
- Quality requirements, standards and or performance outputs which must be met
- Requirements on the contractor to hold and maintain appropriate insurances/ authorisations/ permits etc.
- What happens in the event that the contractor fails to comply with its contractual obligations (in whole or in part).
- Requirements on the contractor to comply with all relevant equalities and health and safety legislation.
- Requirements on the contractor to comply with the provisions of the data protection legislation, as amended, insofar as this applies to the processing of personal data, duties and responsibilities if they are the data controller and or processor
- That the Council shall be entitled to cancel the contract and recover losses in the event that the contractor does anything improper to influence the Council contra to the Bribery Act 2010 or s117(2) Local Government Act 1972
- Cancellation by the Council at any time with notice should the contract adversely impact on the council's standing
- requiring the payment of third party invoices within 30 days of the invoice being regarded as valid and undisputed
- the submission of electronic invoicing

5.4. All contracts with a value of **£25,000 or more** shall be subject to a written risk assessment, which shall be kept on the contract file. This risk assessment could include:

- A market assessment (how many suppliers are in the market)
- Social value weighting
- Continuity of supply
- Any grant conditions applicable
- Declarations on any subsidies, in compliance with WTO (World Trade Organisation), and NI (Northern Ireland) Protocol as necessary.

5.5. Where the Council's procurement requirement can be satisfied from an existing approved contract then any order will be considered an exception to these rules provided the call-off arrangements detailed within that contract are followed or where the original Contract can be varied to meet the requirement. The Director (Corporate Services) must be consulted before invocation of any

such variation. In all instances goods, services or works should be obtained via appropriate, existing, approved arrangements. These include:

- In-house services, for example printing and design, facilities management and Local Authority Trading Company
- Established corporate contracts
- An approved list of suppliers maintained by the Council or a formally approved organisation
- Consortia of which the Council is a member
- Approved nationally negotiated contracts and Framework Arrangement such as those arranged by the Crown Commercial Services

6. Joint Procurement Arrangements

- 6.1. The Director (Corporate Services) and the Monitoring Officer shall approve any joint procurement arrangements with other local authorities or public bodies including membership or use of purchasing consortia prior to the commencement of any procurement on behalf of the Council. They shall also approve any joint procurement arrangements with other local authorities or public bodies including membership or use of purchasing consortia prior to the commencement of any procurement.
- 6.2. Where procurements are being carried out jointly there is a responsibility to ensure compliance with legislative requirements even if the other party are conducting the tender process on behalf of Gravesham Borough Council. Clarity of each contracting authority's responsibilities is needed at the outset to ensure compliance for all elements of the tender both individually and jointly.
- 6.3. All contracts subject to procurement regulations require a termination clause in the event of a substantial modification to the contract which invokes a requirement for a new procurement process
- 6.4. Contracts shall not include non-commercial terms unless these are necessary to achieve best value for the Council or are included in accordance with the Public Services (Social value) Act 2012 or necessary to enable or facilitate the Council's compliance with the public sector equality duty (Section 149 Equality Act 2010), or any duty imposed on it by the Equality Act 2010. In this context, "non-commercial" means requirements unrelated to the actual performance of the contract.
- 6.5. All contracts shall include relevant specifications and/or briefs/technical requirements which are prepared taking into account the need for effectiveness of delivery, quality, sustainability and efficiency (as appropriate).

7. Roles and Responsibilities in procurement activity

7.1. A budget must exist for the procurement to take place. All such expenditure must be committed in accordance with procedures set out and prescribed by the Director (Corporate Services).

7.2. Director (Chief Officer) Responsibilities

- appoint a responsible officer who shall be an authorised signatory
- be responsible for the purchasing undertaken by his/her Directorate
- be accountable to the Cabinet for the contract management and performance of his/her duties in relation to purchasing
- comply with the Council's decision making processes including, where appropriate, implementing and operating a Scheme of Delegations
- take action in the event of a breach of these rules
- comply with all regulatory requirements and integrity of the tender process
- compliance with the relevant statutory provisions and the Council's requirements relating to declarations of interest affecting any purchasing process
- that there is an appropriate analysis of the requirement, timescales, procedure and documentation to be used
- the purchasing process, from planning to delivery incorporates (where appropriate) principles of sustainability, efficiency, equality, social value, whole life costings and cost savings
- that finance are informed of contracts with a value of £25,000 or more and are included on the Council's Contract Register
- that proper records are maintained in accordance with the Data Retention and Disposal Schedule, with separate files for each procurement of a value of £25,000 or more, which record the decisions and decision makers taken in all stages of the procurement process

7.3. When considering how best to procure works, supplies and services or the granting of service concessions, Directors and/or Responsible Officers (as appropriate), shall take into account the wider contractual delivery opportunities and purchasing methods including the use of purchasing

schemes and e-procurement/purchasing methods, and the availability of local authority charging and trading powers.

- 7.4. Procurements may only be undertaken by officers with the appropriate delegated authority to carry out such tasks as set out in the Council's Scheme of Delegations.

8. Financial Thresholds and Procedures

- 8.1. The table in Section 9 sets out the general rules that apply to the choice of purchasing thresholds and the associated public notice requirements. There is a general presumption in favour of competition.

- 8.2. The Council shall

- treat economic operators equally, without discrimination, act in a transparent and proportionate manner
- not design the procurement with the intention of excluding it from the application of these rules or artificially narrowing competition
- (a procurement will be deemed to be avoiding application of these rules where there is no good commercial reason for disaggregation of Council requirements. Competition shall be considered to be artificially narrowed where the procurement is designed with the intention of favouring or disadvantaging certain economic operators)

- 8.3. Contracts with a value of £25,000 the following details must be published on Contracts Finder:-

- details of the winning tenderer
- the contract value
- an indication of whether the winning tenderer is a
 - small business or
 - voluntary sector organisation must be published on Contracts Finder
- for procurements above the legal thresholds, the contract award details must also be published on Find a Tender Service (FTS).

9. Financial Thresholds

Value of goods or services/ £	Minimum requirements	Notes
£0 - £24,999	One quotation in writing	Print out/ copy of a web page, email will suffice.
£25,000 – Up to legal thresholds	Three quotations	<p>Advertise on Contracts Finder</p> <p>Over £50,000 publish and advertise on e –tendering service.</p> <p>Use the Finance Team and e-tendering system to administer the process, manage the contract via contracts register maintained by Finance.</p> <p>Written risk assessment to be completed</p>
<p>Legal Threshold and above</p> <p>Services £138,760.00</p> <p>Works £5,336,937.00</p> <p>(as at 01.01.2022)</p> <p>(Published at: https://www.gov.uk/government/collections/procurement-policy-notes)</p>	Seek at least three tenders	<p>Manage via a fully competitive process.</p> <p>Advertise by public notice on Contracts Finder and Find a Tender (FTS)</p> <p>Use the Finance Team and e-tendering system to administer the process</p>
Other relevant thresholds		
£100,000 denotes key decision, £250,000 a cabinet decision is required.		
The contract value estimation should be inclusive of VAT (where applicable) and contracts must not be artificially disaggregated		

9.2 Where contracts are of a type and value which means that they are at or above the legal thresholds there are five main types of procedures available. These are:

- Open - one stage which will encompass selection and award criteria.
- Restricted - a 2 stage process using a Pre-Qualification (PQQ) and an Invitation to Tender (ITT) Stage).

- Competitive dialogue - the contracting authority “negotiate” with the winning tenderer to “confirm financial commitments or other terms by finalising the terms of the contract” provided this does not materially modify the essential aspects of the tender or the procurement.
- Competitive procedure with negotiation – selected operators are invited to negotiate but this procedure can be carried out in successive stages provided this is indicated to all bidders upfront
- Innovation partnership procedures which are intended for long term partnerships, which allow for both the development and subsequent purchase of new and innovative products, services or works currently not on the market).

9.3 The contract value shall be the genuine pre- estimate of the value of the entire contract, inclusive of VAT. This includes all payments to be made, or potentially to be made, under the entirety of the contract and for the whole of the predicted contract period. This includes proposed extensions, options to include additional services and renewals.

9.4 The relevant Responsible Officers should seek advice from the Finance Team on the ~~app~~ of the rules where they envisage that they may require repeat purchases or purchases of a similar type.

9.5 All tendering procedures (including obtaining quotes), from planning to contract award and signature, shall be undertaken in a manner so as to ensure:

- Sufficient time is given to plan and run the process
- Equal opportunity and equal treatment
- Openness and transparency
- Probity
- Outcomes, which deliver sustainability, efficiency, and equality, social value, whole life costings and cost savings (where appropriate).

10. Evaluation of Quotes and Tenders

10.1 All quotes and tenders shall be evaluated in accordance with an evaluation criterion agreed and published in advance to those submitting quotes/tenders.

10.2 All invitations to tender or quote must:

- Specify the goods, service or works that are required, together with the terms and conditions of the contract that will apply; and
- State that the council is not bound to accept any quotation or tender

10.3 All those invited to tender, or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be requested on the same basis.

10.4 All invitations to tender shall include:

- Clear instructions on how and where tenders are to be submitted, together with the date and time by which they are to be received
- A specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers
- A description of the award procedure
- Full details about how the bids will be assessed, including any pass/fail, weighting and sub-criteria that apply and any "pass mark" for any stage of the procurement
- Information on the Council's policies as appropriate for example, Social Value, Equalities and Sustainability.
- All invitations to tender shall state that any Tender received after the date and time stipulated in the invitation to tender may be rejected and not considered.

10.5 All contracts shall be awarded on the basis of the quote or tender which represents best value for money to the Council, as determined by the award criteria detailed in the invitation to tender or quote and not on the basis of lowest price.

11. Exemptions (Contract Waiver)

11.1 The appropriate Chief Officer in consultation with the Director (Corporate Services) may consider that it is not reasonably practicable or in the Council's best interest to seek competitive quotes where the contract value is below national threshold values.

11.2 In such instances the reasons must be fully documented and approved in writing by the Director (Corporate Services) or Assistant Director (Corporate Services). Examples include, but are not limited to:-

- contracts which are not subject to regulations
- the work, supply, service or grant of service or work concession is required as a matter of urgency and any delay is likely to lead to financial loss, personal injury or damage to property
- the contract is awarded under a purchasing scheme of a type where a competition has already been undertaken on behalf of the Council
- at the discretion of the relevant Director, who may proceed in a manner most expedient to the efficient management of the service/Council, with reasons recorded in writing.

11.3 A Responsible Officer who seeks an exemption shall do so only in advance and only in exceptional circumstances.

11.4 An exemption shall not be applied for reasons of poor contract planning.

12 Purchasing Schemes (including Framework Agreements)

12.1 A Responsible Officer may use purchasing schemes subject to the following conditions and must check in advance that:-

- The Council is legally entitled to use the purchasing scheme
- The purchases to be made properly fall within the coverage of the purchasing scheme

12.2 The establishment and operation of each purchasing scheme is in compliance with and meets the Council's own requirements.

12.3 A “purchasing scheme” may include:

- Contractor prequalification lists/select lists
- Framework arrangements (including those set up by the Crown Commercial Service and any successor body)
- Purchasing arrangements set up by central purchasing bodies and commercial organisations
- Consortium purchasing
- Collaborative working arrangements
- Formal agency arrangements
- E-procurement/purchasing schemes and methods
- Other similar arrangements e.g. procurement platforms, which drive compliance, provide controls over the procurement process and allow organisations to achieve contract realisation etc.

12.4 Where a purchasing scheme is used, there shall be a whole or partial exemption from the obligations under these rules in respect of the choice and conduct of procedures to the extent permitted and indicated in the Procurement Strategy.

13. Procurement Strategy

- 13.1 The Procurement Strategy compliments these rules. The Procurement Strategy places a strong emphasis on social value, commercial activity, and sustainable initiatives, whole life costing and cost savings where appropriate. The strategy, alongside the work programme and corporate arrangements to support procurement outlines how the council can respond to the changing local government landscape. For example, legislative requirements, Framework Agreements, innovative partnerships and shared working arrangements to improve buying power.
- 13.2 Where a purchasing scheme is used, there shall be a whole or partial exemption from the obligations under these rules in respect of the choice and conduct of procedures to the extent permitted and indicated in the Procurement Strategy.
- 13.3 The Procurement arrangements align with the Finance Procedural Rules on financial planning, including budget setting, business planning and funding.

14 Sustainability

- 14.1 The Council declared a climate emergency in June 2019 and are committed to taking action to reduce its carbon emissions and be net zero by 2030.
- 14.2 The Council is committed to working towards a 'greener' future, and working with contractors to understand and measure the carbon footprint of its contracts such as:
- Taking practical action to reduce, the effect the Council's activities have on the environment
 - Improving the quality of the local environment and
 - Encouraging residents to live and work in ways that reduce the borough's effect on worldwide environmental problems, to improve the environment now and protect the future.
- 14.3 The Council's procurement rules are based on the following principles:
- Sourcing sustainable products wherever possible to minimise the damage to the environment
 - Ensuring relevant tenders over a certain threshold award include environmental impact considerations
 - Considering costs such as energy and maintenance when we consider tenders
 - Engaging with suppliers who can actively contribute to minimising their carbon footprint as part of their contract with the Council.

15. Equalities

- 15.1 Before starting any procurement, Council Officers must make sure that they consider equality issue. An Equalities Impact Assessment will inform the detail of the contract specification.
- 15.2 Contractors must adhere to current equalities legislation at all times whilst performing a contract on behalf of the Council.

16. Social Value

- 16.1 Legislation allows the Council to take social and economic considerations into account when procuring Supplies (Goods), Services or Works.
- 16.2 The Council is required under the Public Services (Social Value) Act 2012 to consider how the services it procures, and commissions might improve the economic, social and environmental well-being of Gravesham residents. This is stated in the Councils Social Value Policy.

17. Modern Slavery

- 17.1 The Modern Slavery Act (2015) requires the Council to consider and reduce the risk of modern slavery at all stages of the procurement process.
- 17.2 Tender opportunities/contracts must include such requirements in the Invitation to Tender, the evaluation criteria and ultimately defined in ways that do not discriminate against any bidders across the UK.

18. Whistleblowing

- 18.1 The Council is committed to the highest possible standards of openness, probity and accountability, consequently it encourages employees and others with serious concerns about any aspect of the Councils' work to come forward and voice those concerns.
- 18.2 The Council's whistle blowing policy encourages and enable staff to raise serious concerns within the council rather than overlooking a problem or blowing the whistle outside. The Councils whistle blowing policy enables our employees to raise concerns in respect of any conduct carried out on behalf of the council that:
- may be unlawful
 - may be contrary to the council's policies
 - falls below established standards or practice or that may amount to improper conduct

- 18.3 The policy recognises that certain cases may have to proceed on a confidential basis and concerns can be raised in good faith without fear of reprisals.
- 18.4 The council wants to ensure that the employees of its contractors are similarly encouraged and enabled to raise such concerns and contractors are encouraged to introduce similar provisions in their organisations that are applicable to any work undertaken for the Council.
- 18.5 Any Member or Officer who believes there has been a breach of these rules should report the matter to the Monitoring Officer or use the Council's Whistle blowing Policy.

19 Criminal Record Checks (Disclosure Barring Service DBS)

- 19.1 The Council requires all people who, through the delivery of services who may come into unaccompanied contact with the elderly, disabled or children, to have an up to date and satisfactory Disclosure Barring Service (DBS) report prior to performing any obligation under a contract. The Council should also require such Contractors' personnel to be registered with the Disclosure and Barring Service (DBS) if and when such registration becomes necessary.

20 Transparency

- 20.1 The Local Government Transparency Code (2015) outlines the Government's approach to place more power into the hands of local people; to allow access to information on how money is spent by the Council. The Council has decided to publish details of contracts, commissioned activity, purchase order, framework agreement and any other legally enforceable agreements with a value that exceeds £5,000.

GLOSSARY OF TERMS

Approved Standard Terms	Includes industry standard terms
Best Value	Each local authority has a duty to ‘make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness’ as set out in the Local Government Act 1999. This takes into consideration the 4Cs of Challenge, Compare, Consult and Compete.
Code of Conduct	The code regulating conduct of Officers contained within the Council’s Constitution
Competitive Dialogue	A procedure leading to the award of a contract whereby the Council produces a shortlist through a dialogue with those tenderers who are considered to have appropriate capability and capacity. Based on the solutions discussed, final tenders are sought from the short-listed contractors This procedure is most appropriate for complex procurements where significant input is required from the market to inform the drafting of the specification.
Competitive Procedure with Negotiation	A procedure leading to the award of a contract whereby the Council negotiates the terms of the contract with one or more persons selected by it. The procedure is subject to a complex set of rules.
Contract	An agreement for the delivery of services and or works.
Contract Register	A register held by the Council containing details of all contracts entered into by the Council.
Contractor	Any person or body of persons providing, or seeking to provide, Supplies (Goods), Services or Works to the Council.
Council’s Procurement Strategy	Defines the overall approach to procurement related activity for the Council.

Exemption	A formal request in writing made to the Director (Corporate Services) or Assistant Director (Corporate Services) to exempt the proposed requirement from the Contract Procedure Rules in exceptional circumstances.
Financial Reference	A financial risk assessment of the finances of a company, parent or group of organisations in order to establish their liquidity, profitability, stability and capability to support a contract of the value required.
Financial Regulations/Finance	The Financial Procedure Rules contained within the Constitution.
Find a Tender Service (FTS)	A web-based platform upon which procurement opportunities and procurement notices need to be published, replacing the Official Journal of the European Union (OJEU) or Tenders Electronic Daily (TED).
Framework Agreement	An agreement with suppliers which establishes the terms governing contracts to be awarded during a given period. It allows the Council to make specific purchases (call-offs) in accordance with the terms of that agreement.
Invitation To Quote (ITQ)	A formal written invitation to a minimum number of suppliers to provide written quotations for goods, services or works on the Council's standard terms for requirements between £25K and legal thresholds
Invitation to Tender (ITT)	A formal written invitation to a minimum number of suppliers to provide sealed bid offers for goods, services or works on the Council's standard terms for requirements over the legal thresholds
Kent Business Portal (KBP)	Kent Business Portal – Online portal for the advertising of contracts and awards shared with other Kent authorities.
LATCo	Local Authority Trading Company
Officer	Council employee/ worker as defined in the Constitution

Officer/ Authorised Officer	A person with appropriate delegated authority to act on the Council's behalf
Official Purchase Order	An order placed through the CIVICA Finance System
Open Procedure	A procedure leading to the award of a contract whereby all interested persons may tender for the contract, duly advertised by notice, i.e. there is no limit on the number of tenders received nor may the Council consider the suitability of interested tenderers prior to submission of Tenders.
PCR 2015	Public Contract Regulations 2015.
Pre-qualification Questionnaire (PQQ)	A document that requests economic standing, past experience and technical suitability to determine a shortlist of potential suppliers to invite to tender (ITT). It does not cover delivery questions that will be asked at the ITT stage.
Restricted Procedure	This is a 2 stage process which uses a Pre-Qualification Questionnaire (PQQ) and an Invitation to Tender (ITT) Stage.
Thresholds	The financial threshold at which public procurement laws must be applied.
The council	Gravesham Borough Council
Tenderers	Suppliers/contractors who have been invited to submit a tender to the Council.
Total Value	The whole of the value or estimated value (in money or equivalent value) over the contract term inclusive of VAT.
Value for Money	The optimum combination of full life cycle cost and quality (or fitness for purpose) to meet the user's requirement.

Written Quotation

Quotation in writing provided by a supplier/contractor (bespoke or web based) to the Council containing pricing information and delivery details for requirements

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