



Mansfield District Council
Creating a District where People can Succeed

Contract Procedure Rules



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1. INTRODUCTION

- 1.1 These Contract Procedure Rules (the Rules) provide a corporate framework for the procurement of all goods, services and works for the Council. The Rules are designed to ensure that all procurement activity is conducted with openness, probity and accountability. Above all, the Rules are designed to ensure that the Council obtains value for money and the required level of quality and performance in all contracts. Every contract for the supply of goods and services and for the execution of works made by or on behalf of the Council shall comply with these Rules.
- 1.2 A Procurement Guidance document is written in conjunction with these rules and provides day to day operational procurement procedures. There is also a Procurement Guidance Process Flowchart which provides a diagrammatical map of the procurement processes. The procurement guidance and process flowchart are also supported by a MEL training course.
- 1.3 In order to be fully compliant with the Rules, the accompanying Procurement Guidance and Flowchart must also be adhered to.

2. BASIC PRINCIPLES

- 2.1 Every contract made by the Council, or any officer or external consultant / advisor acting on its behalf shall comply with the EU Treaties and with any relevant directives of the EU for the time being in force in the United Kingdom.
- 2.2 The Rules do not apply to contracts of employment, contracts for the acquisition or disposal of interests in land, and contracts for unique artistic performances or unique art work. Exemption is also permissible where work of an emergency nature is required or where only one supplier could carry out the work e.g. software maintenance.
- 2.3 Where the Council acts in partnership with another organisation then, if agreed in writing by the Head of Finance, the contractual and tendering procedures of the partner organisation may be used in substitution, in whole or in part, for the Rules. Where the Council is the lead authority these Rules are to be followed.
- 2.4 Heads of Service are responsible for ensuring that all employees in their departments receive any required training and guidance and fully comply with these Rules. In addition to their roles as managers, the Corporate Leadership Team (CLT) are responsible for monitoring compliance.
- 2.5 Heads of Service will be responsible for investigating breaches of these Rules, in liaison with the Audit and Assurance Manager who will record them and report them to the Head of Finance and the Audit Committee.
- 2.6 Breaches will be taken seriously, with action in respect of breaches taken in line with the Council's Disciplinary Rules.

- 2.7 Where responsibility has been assigned within these Rules this does not replace line management responsibilities as determined in job descriptions and contracts of employment.
- 2.8 All employees involved in procurement must be aware of the requirement for openness and transparency when undertaking procurement and in the documentation of decisions and actions.

3. COMPLIANCE WITH THE CONTRACT PROCEDURE RULES

- 3.1 The provisions contained in the Rules are subject to the statutory requirements of both the European Union (EU) and the United Kingdom (UK) Government. The letting and content of contracts shall conform to all statutory requirements and be subject to any over-riding directives of the EU relating to contracts and procurement. This cannot be waived, since a failure to comply with European legislation may result in a legal challenge with consequent reputational and financial risk.
- 3.2 In estimating relevant procurement values the estimated value of a scheme, contract or framework agreement purchases shall be calculated in accordance with Section 3 – “Aggregation and Contract Values” of the Procurement Guidance.

3.3 Partnerships

- 3.3.1 The Rules apply to any proposal for the Council to become involved in a joint venture or partnership, including the monitoring of any such arrangement.
- 3.3.2 In relation to the Rules, a joint venture or partnership includes any arrangement involving one or more organisations in addition to the Council through which either a specific project or services within any of the functions of the Council are to be provided.
- 3.3.3 The Rules provide a framework for the Council or any of its members or officers in whatever structure is used to deliver the project or services involved (such structures may include, but are not limited to, companies, trusts and management committees).
- 3.3.4 Where the Council is not the lead partner in a joint venture or partnership, it may use the Procurement Code of Practice / Contract Procedure Rules of the lead partner, provided agreement in writing is given by the Head of Finance or the Financial Services Manager.

4. NORMAL PROCEDURE

4.1 The Rules relate to six categories of procurement based on the estimated value of the contract:

- (a) Less than £5,000
- (b) Between £5,000 and £25,000
- (c) Between £25,000 and £50,000
- (d) Between £50,000 and £EU Threshold
- (e) Above £EU Threshold

The current EU procurement thresholds for goods, services and works can be found at <http://www.ojec.com/threshholds.aspx>

4.2 In all instances, goods, services or works should be obtained by one of the methods outlined below:

- (a) In-house services (preferred option)
- (b) Established corporate contracts
- (c) Framework of suppliers maintained by the Council or a formally recognised organisation
- (d) Framework contracts established by central purchasing bodies or national consortia
- (e) The Council's approved procurement methods including tendering or obtaining quotations
- (f) Approved e-procurement solutions
- (g) For low-value purchases, Procurement Cards may be used

4.3 Orders and payments for goods, services and works shall be undertaken in accordance with the Council's Financial Regulations set out in the Constitution.

4.4 Only an Authorised Officer as specified by the Scheme of Delegation can procure goods, services or works.

4.5 Before entering into a procurement the Authorised Officer must:

- (a) Ensure that there is sufficient approved budgetary provision.

- (b) For any procurement activity with an IT implication regarding any IT related services e.g. software, hardware, notify the Information Technology Manager for guidance on how to proceed.
- (c) For any procurement activity relating to a major change to a financial system notify the Audit and Assurance Manager before the procurement process can commence.
- (d) Plan adequate timescales to ensure that the steps in the procurement process can be undertaken in accordance with these Contract Procedure Rules, legislation approved procurement processes and to mitigate risk to the Council. Sufficient time needs to be allowed for advertising the opportunity, evaluation of bids, pre-contract checks, and obtaining the relevant authorisation to award and for Legal Services to finalise the contract. Authorised Officers should liaise with the Shared Procurement Unit at the earliest opportunity to obtain support on planning adequate timescales,
- (e) Be satisfied that a specification (where appropriate) that will form the basis of the contract, has been prepared (the specification should be retained on the appropriate contract file held within the service).
- (f) Ensure that all evaluation criteria have been determined in advance, put into order of relative importance with weightings for each element and published in the tender pack.

4.6 Before entering into a contract, the Authorised Officer must:

- (a) Ensure that any contractor that may be engaged by the Council in a regulated or controlled activity, as defined by the Independent Safeguarding Authority, is registered with the Independent Safeguarding Authority before the commencement of that contract.
- (b) Be satisfied about the financial and technical capability of the proposed contractor and specifically for all contracts that exceed £50,000 undertake appropriate checks to ensure that the proposed contractor has the financial and resource capacity (taking account of contract value and risk) to perform the contract.
- (c) Ensure that these Rules have been complied with, and that the proposed contract represents value for money.
- (d) Consider the provision of liquidated damages and the need for a performance bond or guarantee (See Section 8).
- (e) Analyse all risks, identify how the risks will be managed, and appoint a Contract Manager (who can be the Authorised Officer) where there is evident risk, and for all contracts over £50,000. This Contract Manager will also ensure that all appropriate policies, such as health and safety,

insurance cover, equalities and sustainability, are adhered to by the appointed contractors during the term of the contract.

This process should follow the Councils Corporate Risk and Opportunity Management Strategy.

5. EXCEPTIONS TO THESE PROCUREMENT RULES

5.1 Subject to statutory requirements and EU Procurement Regulations written quotations or tenders need not be invited in accordance with the Rules in the following cases:

- (a) The expenditure is under £5,000
- (b) The work to be executed or the goods or services to be supplied are provided exclusively by a statutory body.
- (c) The contract is for the execution of work or the supply of goods or services certified by the appropriate Head of Service to be required so urgently as to preclude the invitation of tenders. The appropriate Portfolio Holder shall be kept informed of such decisions. A Contract Exemption form must be completed at the earliest opportunity and be supported by the Head of Service and referenced on the appropriate Corporate Contracts Register entry
- (d) The work to be executed or the goods or services to be supplied constitutes an extension to an existing contract in respect of time period or scope where the existing contract and original procurement process allows for an extension and, subject to the Head of Service deciding that it would not be in the interest of the service or the Council to tender the contract. A Contract Exemption Form must be completed at the earliest opportunity and be supported by the Head of Service and referenced on the appropriate Corporate Contracts Register entry.
- (e) In the case of the supply of goods or services that are specialised and in the opinion of the appropriate Head of Service no reasonably satisfactory alternative is available. A Contract Exemption Form must be completed at the earliest opportunity and be supported by the appropriate Head of Service and referenced on the appropriate Corporate Contracts Register entry.
- (f) The work to be executed or goods / services to be supplied consists of repairs, enhancements or parts for existing proprietary articles that can only be provided by that supplier or manufacturer. A Contract Exemption Form must be completed at the earliest opportunity and be supported by the Head of Service and referenced on the appropriate Corporate Contracts Register entry.

Note: Exemptions will not be granted where this is the result of insufficient time being allocated to the procurement process.

Exemption forms must be retained with the procurement documentation.

See Appendix I for the Contracts Regulations Exemptions Form.

Frameworks

- 5.2 Procurement through frameworks must be in line with the terms and conditions of the framework chosen which may not require quotations or tenders to be invited. Where this route is being proposed the Authorised Officer should obtain advice from the Procurement Unit for procurements with an estimated contract value over £10,000, and benchmark appropriate frameworks before making a choice.
- 5.3 Where within the framework there will be a contract or agreement under seal, the Authorised Officer must obtain a copy of the terms and conditions of the head agreement and provide Legal Services with a copy.

6. PROBITY

- 6.1 In every instance there shall be a record of the process which will include the following:
- (a) Any information that may be required for submitting annual reports to the Government or other agencies
 - (b) The officer(s) undertaking the procurement process and taking the decisions and appropriate delegated decision reports and notices
 - (c) The rationale for the procurement route taken (including open or restricted procedure if above EU thresholds)
 - (d) A copy of the specification
 - (e) Copies of all tenders & completed supplier questionnaires
 - (f) A copy of the evaluation process and reasons for the decisions as to acceptance or rejection for every tender
 - (g) A copy of the award letter (including the applicable standstill period and other notification letters).
 - (h) A copy of the final contract.
 - (i) A copy of the contract review and management process including the officer responsible for on-going contract management.
 - (j) A copy of the Contracts Regulations Exemptions Form if appropriate.

- 6.2 All procurement processes should result in a Purchase Order and the signing and sealing of a written agreement where appropriate. Legal Services should be instructed to either draft or review proposed contracts. No goods or materials shall be ordered, services provided or work commenced until a written agreement has been signed and / or sealed or on the approval of the Head of Law and Governance.
- 6.3 All contracts for goods, services and works over £5,000 must be registered on the Corporate Contracts Register,
- 6.4 For all contracts over £50,000 the original contract documents should be held centrally and securely in Legal Services.

7. EVALUATION OF TENDERS AND QUOTATIONS

- 7.1 The award of any contract as an outcome of the evaluation of a quotation or tender should reflect value for money and the most economical use of resources in furtherance of the Council's corporate priorities.

The method used to achieve this outcome can be an evaluation using either: -

- The Most Economically Advantageous Tender (MEAT) to the Council, or
- The lowest compliant price (but also taking into account all quality criterion considerations within the specification, including whole life costing, etc.).

In both of the above situations the contract should be awarded to the organisation scoring the **highest combined score** taking account of both price and quality.

The method of evaluation and relevant weightings **must** be made clear in the Request for Quotation (RFQ) or Invitation To Tender (ITT) documentation, including sub-OJEU.

Further to this, where MEAT is selected, the individual criteria should also be included in the RFQ or tender documentation. These evaluation criteria **cannot** be changed once it is declared in the adverts / documents, and no variations of such can be made.

Therefore it is important that all areas of the quotation / tender are addressed in the evaluation criteria to assess a successful quotation / tender.

For **OJEU tenders** if any changes are made to the evaluation criteria and / or scoring methodology, post tender notice advert this **will** lead to challenges through the tender award process. Therefore, once an OJEU notice has been publish **no** changes should be made or considered.

Where MEAT is chosen, the individual criteria should be translated into a formal quotation / tender evaluation plan, which must be finalised in advance of the deadline for the receipt of bids.

For OJEU tenders the evaluation process, Team and timescales should be set prior to the OJEU tender notice being published through Tenders Electronic Daily (TED).

- 7.2 Tenders shall be evaluated by at least two officers, in accordance with the evaluation criteria issued with the tender / quotation documentation. Only those tender/quotations that comply with the evaluation criteria shall be considered and must be evaluated on this basis.
- 7.3 A tender / quote that is qualified or expressed to be conditional upon the Council's acceptance or alterations to the specification or the terms and conditions of contract must be treated as non-compliant and rejected. Non-compliant tenders / quotes must not be evaluated. This does not prevent the Council from inviting variant bids. If variant bids are invited, tenderers must be required to submit a mandatory reference bid based on the specification and terms and conditions included in the invitation to tender so that all bids may be compared fairly.
- 7.4 Prior to final contract award, the bidder must provide evidence of adequate insurance to cover both public and employers' liability, and produce such evidence during the life of the contract at the reasonable request of the Authorised Officer.
- 7.5 The unsuccessful bidders should be notified in a letter or e-mail which should contain:
 - (a) The award criteria
 - (b) The score the bidder obtained against those award criteria
 - (c) The score the winning bidder obtained
 - (d) The name of the winning bidder
 - (e) The relative advantages / disadvantages of the bid against the successful bid
 - (f) The Standstill period (if applicable)

8. PERFORMANCE BONDS AND GUARANTEES

- 8.1 In the case of all contracts valued above £500,000 the Authorised Officer shall determine, based on advice from the Head of Finance, the degree of security (if any) required to protect the Council from a contractor default. This may be a performance bond or some other form of financial or performance guarantee.
- 8.2 Where a performance bond and / or parent company guarantee is required, then the advert / tender documents must provide for this.

9 LIQUIDATED DAMAGES

- 9.1 For any contract a provision for liquidated damages should be considered. However where it is estimated to exceed £100,000 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, provision shall be made for liquidated damages. The amount to be specified in each such contract shall be determined by the appropriate Head of Service in consultation with the Head of Law and Governance and the Head of Finance.

10. CONTRACT FORMALITIES

- 10.1 Contracts shall be completed as follows:

| Total Aggregate Value | Method of Completion | By |
|-----------------------|----------------------|---|
| Up to £50,000 | Signature | Head of Service or Authorised Officer |
| Over £50,000 | Sealing | Head of Law and Governance or some other person authorised by him/her and a Head of Service |

10.2 Signature

- 10.2.1 The officer responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it.

10.3 Sealing

10.3.1 Every contract over £50,000 shall be under seal in any of the circumstances listed below and signed by the Head of Law and Governance and some other person authorised by him/her and a Head of Service unless (s)he is satisfied that an agreement under hand is appropriate.

10.3.2 Contracts are completed by each side adding their formal seal, the fixing of the Council's seal must be witnessed by the Head of Law and Governance or some other person authorised by him/her and a Head of Service. Every Council seal will be consecutively numbered, recorded and signed by the person witnessing the seal. A contract must be sealed in any of the following circumstances:

- (a) The Council may wish to enforce the contract more than six years after its end;
- (b) The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services;
- (c) Where there is any doubt about the authority of the person signing for the other contracting party;
- (d) The Total Value exceeds £50,000.

10.4 Archiving & lodgement of records

10.4.1 The original signed contract (not sealed) must be kept securely in the Authorising Officer's Section.

10.4.2 The original sealed contract must be deposited, by the Authorised Officer, with Legal Services.

Contracts Regulations Exemptions Form

| | |
|--|-------|
| <u>NATURE OF PROPOSED EXPENDITURE</u> | |
| | |
| <u>ESTIMATED VALUE (£)</u> | |
| | |
| <u>REASON WHY COMPETITIVE TENDERING IS NOT VIABLE</u> | |
| | |
| <u>PREFERRED CONTRACTOR(S)/SUPPLIER(S) TO BE USED</u> | |
| | |
| <u>AUTHORISATIONS</u> | |
| | |
| Name of Service Requesting Exemption | |
| Date | |
| Head of Service | |
| | |