

**OXFORDSHIRE COUNTY COUNCIL**  
**CONTRACT PROCEDURE RULES**

# Contract Procedure Rules for the Supply of Goods, Services and Works

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# Contract Procedure Rules for the Supply of Goods, Services and Works

## CHAPTER ONE: INTRODUCTION

### 1. Compliance with these Rules, Council Policies, Relevant Legislation and Legal Requirements

#### What these Rules apply to

- 1.1 These Rules apply to all contracts for the provision of goods, services and works to the Council unless otherwise specified in these Rules<sup>1</sup>.
- 1.2 A contract is an agreement which:
- (i) may be oral, written, partly oral and partly written or implied from conduct between the Council and another person;
  - (ii) gives rise to obligations which are enforceable or recognised by law (i.e. legally binding); and
  - (iii) commits the Council to paying or doing something.
- 1.3 These Rules apply to Framework Agreements. A Framework Agreement is a contract with a supplier or suppliers which establishes the terms and conditions (in particular as to price) under which orders/individual contracts can be made during the length of the Framework Agreement. This includes government pre-negotiated contracts. The individual orders made/contracts entered into under Framework Agreements are known as Call-Off Contracts and Rule 19.1 sets out the application of these Rules to Call-Off Contracts.
- 1.4 An extension or variation to a contract may itself be a contract for the purposes of these Rules (see Rule 17).

#### What contracts must comply with

- 1.5 All contracts must comply with all of the following:
- (i) EU law;
  - (ii) English law (including the Council's statutory duties and powers including the Council's fiduciary duty to safeguard public funds);
  - (iii) these Rules and the Financial Procedure Rules;

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<sup>1</sup> See in particular Rules 1.12 and 1.13

- (iv) any relevant Council policies; and
  - (v) any legal requirement stipulated by the County Solicitor.
- 1.6 All contracts must comply with all of the following principles of EU law:
- (i) free movement of goods and services;
  - (ii) non-discrimination;
  - (iii) openness/transparency;
  - (iv) equal treatment for all; and
  - (v) proportionality.
- 1.7 Where a contract requires the tender procedure to be carried out under European Union public procurement legislation (an “**EU Tender**”), additional rules applying to such tender procedures must be complied with. The Relevant Procurement Team should be consulted for advice.
- 1.8 These Rules must be complied with by all officers of the Council and all other persons who are authorised to carry out procurement and contracting on behalf of the Council (such as the Council’s agents for property services) (“**Agents**”). It must be a term of all contracts between the Council and its Agents that the Agents comply with these Rules.
- 1.9 The intention of the Rules must be adhered to.
- 1.10 These Rules must be read in conjunction with the *Procurement Strategy* and the *Procurement Toolkit* which provide guidance on compliance with these Rules.
- 1.11 Any non-compliance with these Rules should be dealt with in accordance with Rule 21.

#### **When these Rules do not apply**

- 1.12 These Rules do not apply to:
- (i) contracts which are not for the provision of goods, services or works (e.g. grants or contracts relating to land). Note, therefore, that these Rules do not apply to contracts of employment but they do apply to consultancy contracts which are contracts for services.

- (ii) contracts entered into by schools with delegated budgets (which should instead be awarded in accordance with the Scheme for Financing Schools).
  - (iii) low value purchases which may be made from petty cash or procurement cards provided that they are in accordance with any operational instructions and financial limits issued by the s151 Officer.
- 1.13 Certain Rules on tendering do not apply in certain situations or to certain specific contracts. Authorised Officers should refer to Rules 18 and 19 for details.
- 1.14 In exceptional circumstances, exemptions to these Rules may be granted. Authorised Officers should refer to Rule 20 for details.

## 2. Where to get advice

- 2.1 Officers requiring advice on procurement practice and EU requirements should contact their Relevant Procurement Team, being:
- (i) their Directorate Procurement Team;
  - (ii) the Joint Commissioning Team; or
  - (iii) the Corporate Procurement Team.
- 2.2 Officers requiring contracts, terms and conditions or legal advice should contact Legal Services.
- 2.3 Officers are also referred to the Annex to these Rules which lists useful documents and policies.

## CHAPTER TWO: PRE-PROCUREMENT

### 3. Pre-Tender Authorisations and Requirements

- 3.1 Authorised Officers must ensure, before entering into any process which will or may result in the incurring of any expenditure for the supply of goods, services or works be it capital or revenue, that:
- (i) where it is a key decision, the requirements of Part 2, Article 12, Section 3(b) of the Constitution have been complied with<sup>2</sup>;
  - (ii) adequate financial provision is included in the Council's approved revenue budget or capital programme (as appropriate) and that such expenditure continues to be available in accordance with the *Financial Procedure Rules*;

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<sup>2</sup> A decision taker may only take a key decision in accordance with the requirements of the Cabinet Procedure Rules and Access to Information Rules in the Constitution. This section sets out further details of what a Key Decision is and what is required.

- (iii) the provisions of the *Financial Procedure Rules* have been complied with; and written authorisation has been obtained in accordance with the following two tables (unless authorisation has been obtained under the *Financial Procedure Rules*)<sup>3</sup>:

**Table 1 Goods and Services**

<b>Cumulative expenditure per contract</b>	<b>Authorisation</b>
Up to but not exceeding £200,000	Authorised Officers in accordance with their delegated financial limits
Above £200,000 but not exceeding £500,000	Director and Authorised Officers in accordance with their delegated financial limits
£500,000 and above	Director and s151 Officer

**Table 2 Works**

<b>Cumulative expenditure per contract</b>	<b>Authorisation</b>
Up to but not exceeding £500,000	Authorised Officers in accordance with their delegated financial limits
Above £500,000 but not exceeding £2,000,000	Director
£2,000,000 and above	Director and s151 Officer

- (iv) in relation to the supply of goods or services, a Gateway 2 (Business case) report has been approved by the Gateway Review Panel if total expenditure to exceed £100,000.
- (v) they have considered whether any consultation requirements apply, including whether the Public Services (Social Value) Act 2012 applies to any services, and have complied with any such requirements.

3.2 The Relevant Procurement Team and Legal Services must be notified before officers enter into any process which will or may result in the incurring of any expenditure for the supply of goods, services or works, where:

- (i) the estimated value of the proposed contract is £25,000 or more; or

<sup>3</sup> See Rule 4 for details of establishing the value of a contract and see Rule 22 for details of Schemes of Delegation and note that "Director" and "S151 Officer" includes any officer to whom the Director and S151 Officer may have delegated their function pursuant to the relevant Scheme of Delegation (see Rules 23.2 and 23.7)

- (ii) the proposed contract is for the benefit of two or more directorates or parties; or
  - (iii) a Call-off Contract will be entered into which is either complicated or involves new terms (e.g. an outsourcing involving a TUPE transfer of Council staff not contemplated in the framework)<sup>4</sup>. In addition, the Relevant Procurement Team must be consulted where any Call-off Contract will be entered into using a third party framework; or
  - (iv) the contract is considered complex, sensitive or high-risk for any other reason.
- 3.3 The Pension Services Manager and the County Human Resources Manager must be notified before officers enter into any process which:
- (i) will or may result in any transfers of staff under the Transfer of Undertakings (Protection of Employment) Regulations (“TUPE”) where any of the staff are or were previously Council employees; or
  - (ii) will or may result in any transfers of staff under TUPE who are members of the Council’s Pension Scheme.
- 3.4 The Deputy Director – Commercial Team E&E as Corporate Landlord must be notified before officers enter into any process which will or may result (a) in a contract that confers exclusive possession of the Council’s premises or (b) in the acquisition by the Council of a property interest.
- 3.5 The ICT Information Services Manager must be notified before officers enter into any process which involves the purchase of IT products or services that are not listed in the ICT Service Catalogue in order to address any potential data security implications for the Council.
- 3.6 The Authorised Officer will undertake an appropriate risk assessment before entering into any process which will or may result in the incurring of any expenditure for the supply of goods, services or works to determine whether there are, or may be, financial, reputational, legal or other risks posed by the proposed contract.
- 3.7 Where there is a corporate contract (i.e. a contract for the benefit of the Council as a whole) for the supply of goods, services or works, no other contract may be used for the supply of those goods, services or works unless this has been authorised in advance in writing by the Chief Finance Officer and/or the Corporate Procurement.

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<sup>4</sup> See Rule 19.1 for the application of these Rules to Call-Off contracts generally

- 3.8 Authorised Officers must keep and maintain records in respect of each contract (from the time the procurement process begins until the point at which the contract ends) in order to demonstrate the achievement of value for money, openness, probity and compliance with these Rules including EU law.

#### **4. Establishing the Value of the Contract/Expenditure per Contract**

- 4.1 The value of a contract (that is, the expenditure per contract) means the actual or estimated amount payable by the Council to the supplier for the goods, services or works (excluding VAT) over the entire possible length of the contract (including, if the contract confers an option to extend, with the exercise of that option, e.g. a three-year contract with an option to extend for two years under which £20,000 is payable per annum has a value of £100,000).
- 4.2 The value of a Framework Agreement means the estimated amount payable by the users of the framework for the goods, services or works (excluding VAT) under Call-off Contracts entered into over the entire possible duration of the framework.
- 4.3 Contracts must not be split into smaller contracts in order to avoid any of these Rules.
- 4.4 For contracts of an indefinite length the value must be established on the basis that the contract will last for a period of 48 months. See also Rule 9.2.
- 4.5 Where the award of a contract to a particular supplier creates circumstances where any reasonably foreseeable future additional work could only be awarded to the same supplier (e.g. because of the supplier's ownership or exclusive rights in relation to a product or service) the value of the contract for the purpose of this Rule 4 should include the likely value of such additional work.

### **CHAPTER THREE: THE PROCUREMENT PROCESS**

#### **5. Best Value – Competitive Quotes and Tenders**

- 5.1 For contracts worth less than £25,000, Authorised Officers must take practicable steps to secure value for money through a combination of cost and quality by clearly defining the business requirement and seeking offers at the lowest cost commensurate with meeting that business requirement.

- 5.2 For contracts worth £25,000 or more, Authorised Officers must take practicable steps to secure value for money through a combination of cost, quality and competition. Competitive quotations or tenders must be sought as shown in the following table, and in accordance with advice from the Relevant Procurement Team:

**Table 3 Goods, Services and Works**

<b>Estimated cumulative expenditure per contract</b>	<b>Competition</b>
£25,000 or above but less than £75,000 (Quotations)	Authorised Officers must ensure genuine competition by inviting sufficient numbers of persons (good practice indicates a minimum of 3 selected impartially) to submit written quotations for the goods, services or works required by the Council. Some degree of advertising may be required and where the Contract is advertised, it must also be advertised on Contracts Finder in accordance with advice from the Relevant Procurement Team.
£75,000 or above but less than the relevant EU directive threshold. (Tenders)	Authorised Officers must ensure genuine competition by inviting sufficient numbers of persons (in normal circumstances EU rules require at least 5 and non-EU good practice indicates a minimum of 3 selected impartially) to submit tenders for the goods, services or works required by the Council. Contracts must be advertised on Contracts Finder and the South East Portal and/or elsewhere if appropriate in accordance with advice from the Relevant Procurement Team.
Equal to or exceeding the relevant EU directive threshold	There are six different award procedures for EU Tenders and different requirements for certain social and other specified services.

- 5.3 Where the total value of:
- (i) a Contract;
  - (ii) all contracts to meet a single requirement for goods or services;  
or

- (iii) all successive contracts of the same type<sup>5</sup>

is equal to or exceeds the values below, the Authorised Officer shall contact their Relevant Procurement Team to establish whether the relevant EU directive threshold has been met or exceeded<sup>6</sup>.

- (i) £164,176 for goods and services;
- (ii) £4,104,394 for works.

5.4 Call-off Contracts must be entered into in accordance with the terms of the relevant Framework Agreement and a mini-competition (the tender process required by the Framework Agreement) must be held where relevant. Where a Framework Agreement has been set up following an EU Tender, there must be full compliance with EU rules when awarding Call-off Contracts under it.

## **6. Pre-Qualification Requirements/Minimum Standards for Suppliers**

- 6.1 Authorised Officers are responsible for ensuring that all persons awarded Contracts for the supply of goods, services or works to the Council have met the Council's minimum standards of suitability, capability, legal status and financial standing as advised by the Relevant Procurement Team.
- 6.2 Where the Contract is not subject to an EU Tender, Authorised Officers must not carry out a separate pre-qualification stage unless approved by the Relevant Procurement Team.

## **7. Invitations to Tender**

- 7.1 An invitation to tender/request for quotation must be sent out for all procurement processes listed in Table 3.
- 7.2 All invitations to tender must:
  - (i) clearly specify the goods, services or works that are required (subject to appropriate adjustment where the negotiated, competitive procedure with negotiation or competitive dialogue procedure is being used);

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<sup>5</sup> Authorised Officers should consult the Relevant Procurement Team for advice on calculating this amount.

<sup>6</sup> These are the basic EU threshold values which apply from 1 January 2016 to 31 December 2017, however, the full EU rules are not applicable in the same way to all contracts (for example, there is a higher threshold for certain social and other specified services) and therefore advice must be taken. After 31 December 2017, the Relevant Procurement Team must be consulted to establish the updated values.

- (ii) list the criteria on which the tender(s) will be evaluated (see Rule 8) showing the weighting of the various evaluation criteria unless otherwise advised by the Relevant Procurement Team and Legal Services;
- (iii) include a requirement for tenderers to declare that the tender content, price and all other figures or particulars concerning the tender have not been disclosed by the tenderer to any other party (see guidance on pro formas for use as set out in the *Procurement Toolkit*);
- (iv) include a requirement for tenderers to complete fully and sign all tender documents including certificates confirming that no canvassing or collusion has taken place; and
- (v) state that the contract will be on the Council's conditions of contract which are to be enclosed with the invitation to tender.

7.3 The list of requirements in Rule 7.2 is not exhaustive and any and all additional requirements of the Relevant Procurement Team must also be met. Further guidance is available in the *Procurement Toolkit*.

## 8. Evaluation Criteria

8.1 In determining the relevant evaluation criteria on which quotations and tenders are to be assessed, Authorised Officers, in consultation with their Relevant Procurement Team where appropriate, must consider all factors relevant to their requirement, including environmental and social considerations, so far as this is lawful.

8.2 The evaluation process must clearly demonstrate that the Council is seeking to identify the quotation or tender which offers the best value for money (see Rule 5).

## 9. Terms and Conditions of Contracts

9.1 Terms and conditions for all contracts for goods, services and works with a value of £25,000 or more (and preferably all other contracts, particularly consultancy contracts to ensure that all intellectual property rights are transferred to the Council and no employee or worker rights are acquired by the consultant) must be in accordance with terms and conditions prepared or approved by the County Solicitor unless otherwise agreed by the County Solicitor.

9.2 Any contract of less than £25,000 which is of indefinite duration must be in accordance with any terms and conditions prepared or approved by the County Solicitor so as to ensure that the termination provisions are satisfactory.

- 9.3 All written contracts (whatever their value) shall require that:
- (i) any payment due from the Council is made no later than 30 days from the date on which the relevant invoice is regarded as valid and undisputed;
  - (ii) any invoices submitted by the contractor are considered and verified by the Council in a timely fashion and undue delay in doing so is not to be regarded as sufficient justification for failing to treat an invoice as valid and undisputed;
  - (iii) any subcontract imposes obligations similar to those which (i) and (ii) require and an obligation that the subcontractor is required to impose such obligations in any further subcontract.
- 9.4 All contracts with a value of £25,000 or more must include a clause empowering the Council to terminate the contract for bribery or corruption and to recover from the supplier the amount of any loss resulting from such termination in a form approved by the County Solicitor.
- 9.5 The relevant Authorised Officer shall ensure that all contracts with a value of £75,000 or more are allocated to a named contract manager who is responsible for managing the contract during the whole life of the contract (including arrangements for replacement, where applicable, at the end of the contract life).
- 9.6 All contracts requiring an EU Tender must contain the termination provisions required by the Public Contracts Regulations 2015 in a form approved by the County Solicitor.
- 9.7 Save as set out in Rules 14.5 – 14.7 and 15.2, all contracts with a value of £500,000 or more and any other contract requiring the additional limitation period of 12 years rather than 6 years for court proceedings in the event of default must be drafted as a deed. This is particularly relevant to construction contracts in the case of latent defects.
- 9.8 Framework Agreements must not be entered into for more than four years (including options to extend) unless otherwise advised by the County Solicitor and the Relevant Procurement Team.

## **10. Receipt of Tenders (including under Framework Agreements) and Opening of Tenders**

- 10.1 Authorised Officers must comply with the Council's *Procedures for Receipt and Opening of Tenders*.
- 10.2 Where paper tenders are obtained, the Authorised Officer must comply with requirements specified by the Relevant Procurement Team.

- 10.3 All tenders received, including those in mini-competitions under Framework Agreements, must remain unopened and be kept secured until the specified closing date and time for receipt of tenders has passed.
- 10.4 Electronic tenders, including those in mini-competitions under Framework Agreements, must be delivered to a secure electronic system owned or operated on behalf of the Council.

## 11. Evaluation of Tenders

- 11.1 Authorised Officers must ensure that appropriate directorate or other Council technical and financial officers evaluate all tenders, including those in mini-competitions under Framework Agreements, in accordance with the evaluation criteria specified in the invitation to tender.
- 11.2 The arithmetic in compliant tenders, including those in mini-competitions under Framework Agreements, must be checked. If arithmetical or clerical errors are found they should be notified to the tenderer, which should be requested to confirm the correct figures/wording or withdraw its tender.
- 11.3 Authorised Officers must compare submitted tender prices with any project appraisal or pre-tender estimates. All differentials must be considered. For tender prices of £75,000 or more where the differential is more than:
- (i) 20% above or below the project appraisal or pre-tender estimate, this must be reported to the Director; and
  - (ii) 50% above or below the project appraisal or pre-tender estimate, this must be reported to the Director and the s151 Officer.
- 11.4 In cases as set out in Rule 11.3 for goods and services, a tender must not be accepted unless this has been authorised by the Director or the Director and the s151 Officer (as applicable). For capital expenditure authorisation of acceptance of variations must be in accordance with the *Financial Procedure Rules*.

## 12. No Material Changes to Contract Post-Tender

No material changes must be made to the proposed arrangements and terms and conditions post tender. See Rule 17 for requirements when the contract has been entered into.

## CHAPTER FOUR: CONTRACT AWARD

### 13. Authorisation for the Award of Contracts

- 13.1 Contracts may only be awarded by the Council if there has been full compliance with these Rules and the *Financial Procedure Rules*.
- 13.2 Tenders may be evaluated and recommended for acceptance as follows<sup>7</sup>:

**Table 4 Goods and Services**

Cumulative value of contract	Acceptance by
Tender not exceeding £200,000	Authorised Officers in accordance with their delegated financial limits
Above £200,000 but not exceeding £500,000	Director
£500,000 and above	Director and s151 Officer

**Table 5 Works**

Cumulative value of tender	Acceptance by
Tender not exceeding £500,000	Authorised Officers in accordance with their delegated financial limits
Above £500,000 but not exceeding £2,000,000	Director
£2,000,000 and above	Director and s151 Officer

- 13.3 No tender can be accepted or contract awarded unless this is on the basis of the evaluation criteria sent out with the invitation to tender.
- 13.4 Where a key decision was required to authorise the entering into of the procurement process under Rule 3, the contract must not be awarded unless that decision has been complied with (for example, a new decision may be required prior to award or the risk factors may have changed).
- 13.5 Where a key decision was not required to authorise the entering into of the procurement process under Rule 3 but due to the price of the winning bid it has become a key decision, the requirements of Part 2, Article 12, Section 3(b) of the Constitution must be complied with before the contract is awarded.

<sup>7</sup> Note that "Director" and "S151 Officer" includes any officer to whom the Director and S151 Officer may have delegated their function pursuant to the relevant Scheme of Delegation (see Rules 23.2 and 23.7)

## 14. Procedure for Award of Contracts

- 14.1 Successful and unsuccessful tenderers (and, for EU Tenders, those persons who expressed an interest in the contract unless they have already been rejected and have been informed of that rejection and the reasons for it) must be notified of the award of the contract for which they have submitted a tender. This notification letter must be in a form approved by the Relevant Procurement Team (see guidance in the *Procurement Toolkit*).
- 14.2 Where there has been an EU Tender, and in such other circumstances as the County Solicitor may advise, the award of the contract must be subject to the legally-required standstill period to enable unsuccessful bidders to challenge the award prior to completion of the contract. Where there is a court challenge prior to completion of the contract then the contract must not be completed without the authorisation of the County Solicitor, S151 Officer, the Relevant Procurement Team and the relevant Director.
- 14.3 All contracts with a value of £25,000 or more must be in writing and all other contracts should be in writing.
- 14.4 In relation to contracts for goods or services, if total expenditure is anticipated to be over £100,000, a contract should not be awarded unless a Pre-Award Evaluation Report (Gate 3 report) has been submitted to the Gateway Review Panel and subsequently approved to proceed to Gate 4 and implementation.

### **Contracts which are not Call-off Contracts**

- 14.5 Save as set out in Rule 15.2, contracts must be signed or sealed as follows (for the avoidance of doubt no elected or co-opted Member of the Council may sign any contract for or on behalf of the Council):

**Table 6 Goods, Services and Works**

<b>Cumulative value of contract</b>	<b>Execution</b>
Less than £25,000	Signed by one Authorised Officer in accordance with their delegated financial limit.
From £25,000 up to and including £200,000	Signed by Authorised Officers in accordance with their delegated financial limits, and one other officer designated by the Director under the directorate's Scheme of Delegation.

Cumulative value of contract	Execution
Above £200,000, but less than £500,000.	Signed by the Director and s151 Officer.
£500,000 or more	Sealed by the County Solicitor on behalf of the Council on the instructions of the Director and s151 Officer.

### **Call-off Contracts**

- 14.6 *Council Framework Agreement with no new terms:* Where a Call-off Contract is entered into under a Framework Agreement which has been set up by the Council and no new terms are being introduced (e.g. under a mini-competition), the Call-off Contract does not have to be signed or sealed (unless required in accordance with the terms of the Framework Agreement) BUT the Call-off Contract must be authorised as set out in Rule 3 and under the directorate's Financial Scheme of Delegation and orders made in accordance with the applicable finance procurement procedures.
- 14.7 *Council Framework Agreement with new terms:* Where a Call-off Contract is entered into under a Framework Agreement which has been set up by the Council and new terms have been introduced (e.g. following a mini-competition), the Call-off Contract must be signed or sealed as set out in Rule 14.4 unless otherwise agreed by the County Solicitor.
- 14.8 *Third Party Framework Agreements:* Where a Call-off Contract is entered into under a Framework Agreement which has been set up by a third party, the Call-off Contract must be signed or sealed as set out in Rule 14.5 unless otherwise agreed by the County Solicitor.
- 14.9 For the avoidance of doubt, all Framework Agreements and subsequent Call-off Contracts are subject to prior review and approval via the Gateway Review Panel if anticipated total contract value (in the case of the Framework Agreement) or individual call-off value (in the case of the Call-off Contract) is over £100,000.

### **All contracts**

- 14.10 In relation to contracts with a total value between £5,000 and £25,000, Authorised Officers must inform the Relevant Procurement Team of all contracts (including Call-off Contracts) awarded promptly (and preferably within 5 working days of the date of the award) so that the:
- (i) details of the contract can be added to the Council's contracts register on the South East Business Portal;
  - (ii) Central Buying Team can publish details of the contract award on Contracts Finder; and

- (iii) Central Buying Team has the necessary information to comply with the law, for the annual statistical return to central government and to report to the government and the European Commission.

14.11 For EU tenders, a legally compliant award notice must be published.

## **15. Commencement of Contracts**

No supply of goods, services or works must commence until all contract documentation is duly completed (see Rule 14) and, in the case of contracts for goods or services with a total planned expenditure over £100,000, agreement to proceed through the relevant Gate implementation has been given by the Gateway Review Panel, except:

- 15.1 in cases of emergency falling under Rule 19.2, in which case the contract documentation must be completed at the earliest opportunity;
- 15.2 where there has been a tender for works (but not goods or services) and the contract price only holds good for a limited period or there is some other circumstance beyond the Council's control delaying completion of formal contract documentation. In that case a contract may be formed by letter (which records all the provisions of the contract and is signed in accordance with the relevant Scheme of Delegation) and formal contract documentation must be completed at the earliest opportunity and signed or sealed as appropriate depending on its value. This procedure must not be used if there are any outstanding or unresolved contract provisions unless this is agreed by the County Solicitor; or
- 15.3 where otherwise approved by the County Solicitor.

## **CHAPTER FIVE: POST-AWARD**

### **16. Contract and Risk Management**

- 16.1 The Contract Manager must maintain a risk register during the contract period highlighting the risk and mitigation strategy for the contract and, for identified risks, must ensure contingency or risk mitigation measures are in place.

### **17. Extensions and Variations of Contracts**

#### **Extensions**

- 17.1 Where an Authorised Officer wishes to exercise an option set out in a contract to extend that contract, this must be referred to the Relevant Procurement Team and Legal Services for advice and, where the anticipated value of the extension is over £100,000, will be subject to prior review and approval via the Gateway Review Panel. Any notice

exercising an extension option must be given in accordance with the contract terms and in writing but will not require the agreement of the provider if the option is at the Council's sole discretion.

- 17.2 Where an Authorised Officer wishes to extend a contract (where Rule 17.1 does not apply) the extension constitutes a new contract and is subject to these Rules (e.g. a proposed extension (to which Rule 17.1 does not apply) for a value in excess of £25,000 requires an exemption unless Rule 18 or 19 applies).

### **Variations**

- 17.3 Where an Authorised Officer wishes to vary a contract (e.g. change the price, buy additional services, or replace the provider), this must be referred to the Relevant Procurement Team and Legal Services for advice to establish whether the proposed variation is material. If a variation is material, it is a new contract for the purposes of these Rules.
- 17.4 Where a proposed variation is not material, or where it is material but it is established with advice from the Relevant Procurement Team and Legal Services that a competitive process does not need to be followed, the Authorised Officer shall comply with Rule 3.1 and Rule 17.6.
- 17.5 Where a variation is proposed to settle a contractual dispute the Authorised Officer, the Relevant Procurement Team, the County Solicitor and the relevant Director must certify that it is in the best interests of the Council.
- 17.6 The Authorised Officer shall ensure that all variations are (a) in writing, (b) in accordance with the terms of the contract; and (c) signed by authorised signatories of both (or all) parties.

## **CHAPTER SIX: GENERAL**

### **18. Contracts to which Rules on Tendering (Rules 5 – 8 and 10 - 12) do not apply – Service Specific**

Competitive quotes or tenders are not required for the following:

- 18.1 **County Solicitor:** contracts for the engagement of Counsel.
- 18.2 **Transport:** subsidised bus contracts not caught by Rule 5.3 and identified as meeting the de minimis requirements in the Service Subsidy Agreements (Tendering) (England) (Amendment) Regulations 2004 which must instead follow guidance issued by the Department for Transport, currently the "Guidance on New De Minimis Rules for Bus Subsidy Contracts".

- 18.3 **Children, Education & Families, Social & Community Services and Public Health Services:** contracts for the provision of children's services (including the provision of accommodation for children) (CEF), social care contracts for services (S&CS) and public health services which may instead follow the *Children, Education & Families, Social & Community Services and Public Health Services Joint Commissioning/ Procurement Procedures* prepared by the Director for Adult Social Services in consultation with the County Solicitor, the s151 Officer and the Principal Procurement Manager – Joint Commissioning).
- 18.4 The exceptions in Rules 18.1 to 18.3 (inclusive) do not apply where the proposed course of action conflicts with EU public procurement legislation.
- 18.5 The rest of these Rules must still be complied with.

## 19. **Contracts to which Rules on Tendering (Rules 5 – 8 and 10 -12) do not apply – General**

Competitive quotes or tenders are not required for the following:

### 19.1 Call-off Contracts

Call-off Contracts where the relevant Framework Agreement has been entered into by:

- (i) the Council in compliance with these Rules; or
- (ii) another local authority, a local authority purchasing consortium or central government where the Framework Agreement has been tendered and awarded in accordance with EU public procurement legislation<sup>8</sup>.

Rules 5.4 and 9 – 12 apply to mini-competitions and, for the avoidance of doubt, Call-off Contracts must be entered into in accordance with the terms of the Framework Agreement (e.g. selection by mini-competition) and mini-competitions under Framework Agreements must be run in accordance with Rule 1.6.

For the avoidance of doubt, all Call-Off Contracts with a value over £100,000 will be subject to review by the Gateway Review Panel.

### 19.2 Emergency

- 19.2.1 In cases of emergency, a Director may verbally authorise and record in writing an exemption from these Rules for goods, services or works PROVIDED THAT:

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<sup>8</sup> The Relevant Procurement Team must be consulted prior to use of such frameworks in accordance with Rule 3.2(iii).

- (1) the emergency was brought about by events which were not reasonably foreseeable by, or attributable in any way to, the Council (e.g. flood); and
- (2) if the goods, services or works are not received immediately, there is a significant risk of:
  - (a) danger to life; or
  - (b) damage to property; or
  - (c) a major impact on the Council or its service users.

19.2.2 In these cases only goods, services or works necessary or appropriate to safeguard the Council's position or protect life and property can be procured before formal approval is obtained.

19.2.3 Directors must at the earliest opportunity inform the s151 Officer and the County Solicitor of the action taken in dealing with the emergency. Directors must also submit a report to the Cabinet or the relevant Portfolio Holder that details the circumstances of and justifications for granting exemptions made in accordance with this Rule.

### 19.3 No competitive market

19.3.1 Proprietary or patented goods or services are proposed to be purchased which, in the opinion of the Authorised Officer, are only obtainable from one person, and it can be demonstrated that no reasonably satisfactory alternative to those proprietary or patented goods is available; or

19.3.2 The Authorised Officer can demonstrate that no genuine competition can be obtained in respect of the purchase of particular goods, services or works; or

19.3.3 The Authorised Officer is satisfied that the works or services are of such a specialist nature that they can only be carried out by one person (e.g. statutory undertakers); or

19.3.4 Goods are proposed to be purchased by or on behalf of the Council at a public auction; or

19.3.5 Goods are proposed to be purchased which are of a specialist nature (such as antiquities for museums),

PROVIDED THAT in all these cases (except for works which are primarily the responsibility of a utility or statutory undertaker<sup>9</sup>)

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<sup>9</sup> As defined in s329 Highways Act 1980

- (1) the Authorised Officer must prepare a report setting out:
  - (a) the reasons why the relevant circumstances apply;
  - (b) why it is in the best interests of the Council for the contract not to be tendered;
  - (c) the process which is intended to be followed instead;
- (2) the Authorised Officer receives written agreement to pursue the course of action set out in the statement from:
  - (a) the appropriate Director;
  - (b) the s151 Officer;
  - (c) the Relevant Procurement Team; and
  - (d) the County Solicitorand
- (3) the Authorised Officer, in conjunction with Legal Services, ensures that contract terms are appropriate taking into account all relevant factors (such as benefit and risk to the Council).

#### 19.4 Discount

Where there is a competitive market for goods, services or works contracts under which the Council receives those goods, services or works for a sum which is less than 50% of the benchmarked market price with the balance being paid by a third party PROVIDED THAT this has been certified by the s151 Officer and the County Solicitor<sup>10</sup>.

19.5 The exceptions in Rules 19.1 to 19.4 (inclusive) do not apply where the proposed course of action conflicts with EU public procurement legislation.

19.6 The rest of these Rules must still be complied with.

## 20. Exemptions from these Rules

20.1 Exemptions from these Rules will only be granted in exceptional circumstances. Generally, a lack of foresight and planning resulting in insufficient time to carry out a lawful tendering process will not constitute adequate justification.

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<sup>10</sup> Note that this is intended to be used primarily for agreements under section 278 of the Highways Act 1980

- 20.2 At the conclusion of every Exemption Process whether granted or not the Director/Authorised Officer shall notify the Monitoring Officer<sup>11</sup> of the final outcome of the process, along with a copy of the complete set of relevant papers.

### **Register of Exemptions**

- 20.3 The Monitoring Officer will maintain a register of all exemption requests under this Rule 20 and will provide a copy of this register to the Chief Finance Officer (s151 Officer) at least every six months, and otherwise as and when requested to do so by the s151 Officer.

### **Contracts with a value of less than £75,000**

- 20.4 An Authorised Officer may seek an exemption from any of these Rules for a contract with a total value of less than £75,000 from:

- (i) the relevant Head of Service/Business Manager;
- (ii) the County Solicitor; and
- (iii) the Relevant Procurement Team.

- 20.5 In order to request an exemption the Authorised Officer must prepare a report setting out:

- (i) the reasons why the exemption is being requested and which Rule(s) an exemption is being requested from; and
- (ii) the process which is intended to be followed instead.

- 20.6 An exemption will only be granted where the Head of Service/Business Manager, the County Solicitor and the Relevant Procurement Team are satisfied that the exemption is justified on its own special circumstances and have given their consent in writing.

### **Contracts with a value of £75,000 or more<sup>12</sup>**

- 20.7 A Director may seek an exemption from any of these Rules from:

- (i) the Cabinet or a Portfolio Holder acting under delegated powers;  
or
- (ii) the Chief Executive acting under delegated powers.

- 20.8 In order to request an exemption the Director must prepare a report setting out:

- (i) the reasons why the exemption is being requested and which Rule(s) an exemption is being requested from;
- (ii) the process which is intended to be followed instead;
- (iii) a legal appraisal from the County Solicitor;

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<sup>11</sup> cprexemptions@oxfordshire.gov.uk

<sup>12</sup> See Contract Procedure Rules - Exemption Procedure (with pro forma report) for further details.

- (iv) a financial appraisal from the s151 Officer; and
- (v) confirmation that the Relevant Procurement Team has approved the contents of the report

20.9 An exemption will only be granted where the Cabinet, the Portfolio Holder or the Chief Executive is satisfied that the exemption is justified on its own special circumstances and has given his/her consent in writing.

## **21. Non-compliance with these Rules**

21.1 Any non-compliance with any of these Rules must be notified to the relevant Director and Finance Business Partner (as delegated s151 Officer) by the Authorised Officer at the earliest opportunity. The relevant Director will act in accordance with the Council's Contract Procedure Rules – Breach Policy.

21.2 If the non-compliance cannot be remedied by the taking of any appropriate step or measure, the matter must be notified to the s151 Officer and the County Solicitor by the relevant Director. Where a particular course of action is specified by both the s151 Officer and the County Solicitor this must be complied with.

21.3 If a non-compliance has given rise to, or is likely to give rise to illegality or maladministration, the s151 Officer and County Solicitor will notify the Monitoring Officer.

21.4 If these Rules are not complied with, this will not invalidate any contract entered into by or on behalf of the Council, except where EU or English law provides to the contrary.

## **22. Schemes of Delegation**

22.1 Directors must ensure that they have Schemes of Delegation identifying:

- (i) Authorised Officers; and
- (ii) the extent of Authorised Officers' delegated authority (including expenditure limits which reflect authorisation limits set out in the SAP Approval Matrix).

22.2 Authorised Officers may not, under any circumstances, act outside the delegated powers of their Director.

22.3 Directors must ensure that all Authorised Officers receive the necessary training to be and remain conversant with these Rules.

- 22.4 Directors must supply to and agree with the s151 Officer their Schemes of Delegation before the start of each financial year, and on making any amendments. The s151 Officer must keep a register of all Schemes of Delegation and supply a copy to the County Solicitor at the beginning of each financial year, and notify the County Solicitor of any subsequent amendments.

## 23. Definitions

For the purposes of these Rules:

- 23.1 **Authorised Officers** means those officers of the Council identified as such by Directors in their Schemes of Delegation and approved by the s151 Officer to undertake procurement and contracting on behalf of the Council (including authorisation of expenditure, preparing and/or negotiating contract documentation, awarding and signing contracts and/or managing contracts) and any Agents as defined in Rule 1.8 with such authority;

- 23.2 **Contract** means an agreement which:

- (i) may be oral, written, partly oral and partly written or implied from conduct between the Council and another person;
- (ii) gives rise to obligations which are enforceable or recognised by law (i.e. legally binding); and
- (iii) commits the Council to paying or doing something;

and, where the context requires, a reference to a contract means a contract to which these Rules apply<sup>13</sup> and a **“Call-off Contract”** means an order made/call-off contract entered into under a Framework Agreement;

- 23.1 **Contracts Finder** means the web-based portal provided by or on behalf of the Cabinet Office;

- 23.2 **Director** means directors and officers to whom directors have delegated their functions in accordance with the relevant Scheme of Delegation;

- 23.3 **EU Tender** means a tender procedure which needs to be carried out under European Union public procurement legislation;

- 23.4 **Framework Agreement** means a contract with a supplier or suppliers which establishes the terms and conditions (in particular as to price) under which Call-off Contracts can be made during the length of the Framework Agreement. This includes government pre-negotiated contracts;

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<sup>13</sup> Note that service level agreements or SLAs are not generally legally binding and must not be used with third parties (i.e. outside the Council).

- 23.5 **person** means any individual, partnership, local authority or incorporated or unincorporated body;
- 23.6 **Relevant Procurement Team** means whichever of the following advises the Authorised Officer:
- (i) the E&E Procurement Team;
  - (ii) the Strategic Procurement Team, Joint Commissioning; or
  - (iii) the Corporate Procurement Team
- 23.7 **s151 Officer** means the Chief Finance Officer appointed under s151 Local Government Act 1972 and officers to whom the s151 Officer has delegated his or her functions in accordance with the relevant Scheme of Delegation; and
- 23.8 **Scheme of Delegation** has the meaning given to it under Rule 22.

## ANNEX

### Useful Documents and Policies<sup>14</sup>

- Policy on the Employment of Ex-Offenders and Disclosure and Barring Service Checks
- Anti-Fraud and Corruption Strategy
- Disclosure and Barring Service Storage Policy
- Corporate Data Protection Policy
- Policy on Declaring and Registering Interests
- Policy on the Employment of Ex-Offenders and Disclosure and Barring Service Checks
- Equality and Diversity in the Workplace Policy
- Corporate Freedom of Information Act Policy
- Health and Safety
- ICT Acceptable Use Policy
- Egress secure email and file sharing guidance
- Public Service Network (PSN) Acceptable Usage Policy

Key documents can also be found in the:

- Corporate Governance Library
- Procurement Toolkit and Guidance

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<sup>14</sup> Note that this list is not exhaustive and it is the responsibility of the Authorised Officer to ensure that all relevant policies have been taken into account.