



## **Bridgend County Borough Council**

### **Contract Procedure Rules**

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## 1. Interpretation

In these Contract Procedure Rules:-

"Appropriate Body" means the Cabinet, and any committee, panel or other body to which power has been delegated to accept tenders for Contracts of the category for which tenders are to be or have been invited.

"Appropriate Chief Officer" means whichever of the following is responsible in any particular case for inviting tenders or placing an official order:-

Chief Executive  
Chief Officer Legal, HR and Regulatory Services and Monitoring Officer  
Corporate Director – Education and Family Support  
Corporate Director – Social Services and Wellbeing  
Corporate Director – Communities.

This definition also includes any Officer to which functions have been delegated under the Council's Scheme of Delegation of Functions

"Cabinet" means the executive body of the Council established in accordance with Part II of the Local Government Act 2000.

"Cabinet Functions" means the functions for which the Cabinet is responsible.

"Cabinet Members" means the leader and the members of the Cabinet.

"Chief Audit Officer" means the Head of Audit Service for the Council.

"Chief Finance Officer" means the nominated Section 151 officer under the Local Government Act 1972 for the time being having statutory responsibility for the administration of the Council's financial affairs.

"Community Benefits" shall include any benefit to the local community which does not directly positively impact on the operation of the Council. This can include the provision of additional facilities/resources or the training of primarily inactive people through programmes which may include apprenticeships. "Core" benefits are those which are directly related to the purpose of the Contract and can be measured as an outcome. "Non-Core" benefits are those which are not essential in the delivery of the service and will not be assessed as part of the tender evaluation process.

"Contract" means any form of contract or agreement entered into by the Council with any other party for the supply of goods, services or works, or any combination thereof.

“Contractor” means any person or organisation that undertakes a Contractual relationship with the Council.

“Contract Value” means the total value of the Contract over the whole term of the Contract. If there is no total price then the value of the Contract is to be calculated on the expected aggregate spend over the four year period, if there is no fixed term for the Contract. In the case where there is a Contract term but no total price then the value of the Contract is to be calculated on the expected expenditure over the whole Contract period, in accordance with the Regulations. All Contract values are exclusive of VAT.

“Corporate Contracts Register” means a live database of contracts let by the Council.

“Corporate Procurement Manager” means the lead Officer for the Corporate Procurement Unit, who has functional responsibility for the delivery of Procurement strategy and guidance.

“Council” means the Bridgend County Borough Council.

“Data Protection Legislation” means (i) the UK GDPR and any applicable national implementing Law, as amended from time to time; (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy.

“EU” means the European Union.

“Form of Tender” means a covering document signed by the tenderer to indicate that it understands the tender and accepts the terms and conditions and other requirements of participating in the exercise a copy of which can be found on the Corporate Procurement Page.

“Framework Agreement” means an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing Contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

“Internal Providers” means an organisation managed, funded and staffed by the Council, which provides a service to various directorates and schools as its core business.

“Legal Requirements” means all UK and Welsh law that governs and or relates to the procurement of goods, services and works and the letting of concession contracts.

“Monitoring Officer” means the officer for the time being designated as such under Section 5 of the Local Government and Housing Act 1989.

“Most Economically Advantageous Tender” (MEAT) means criterion which enables the Council to take account of criteria that reflect qualitative, technical and sustainable aspects of the tender submission as well as price when reaching an award decision

“Parties” means collectively the Council and any other party or more than one party entering into a Contract or agreement.

“Pre-tender Client Information Sheet” means a document that requires completion by the client before going out to tender or to obtain quotations unless a Cabinet Report has been approved a copy of which can be found on the Corporate Procurement Page.

“Regulations” means the Public Contract Regulations 2015;

"Trade Journal" means a newspaper or journal circulating among such persons or bodies as undertake Contracts of the category for which tenders are to be invited.

“UK GDPR” means the UK General Data Protection Regulation.

Words importing the singular shall include the plural and vice versa.

Any reference to any statutory provision shall include reference to any statutory modification amendment or re-enactment thereof and any subordinate legislation made under them.

## **2. COMPLIANCE WITH CONTRACT PROCEDURE RULES AND RELEVANT EUROPEAN AND UK LEGISLATION**

2.1 Every Contract shall:

- (a) Comply with the Council’s Constitution, including in particular the Financial Procedure Rules, the Scheme of Delegation of Functions and these Contract Procedure Rules;
- (b) Comply with all relevant statutory provisions including in particular, but not limited to, the Local Government Act 1988 Part II, the Local Government (Contracts) Act 1997, the Local Government Act 1999 Part I, and the Regulations;
- (c) Achieve Most Economically Advantageous Tender;
- (d) Be consistent with the highest standards of integrity, having regard to the Bribery Act 2010 and the Competition Act 1998;
- (e) Ensure fairness in allocating public Contracts;
- (f) Comply with all Legal Requirements;
- (g) Comply with the Equality Act 2010;
- (h) Comply with the Modern Slavery Act 2015;
- (i) Comply with relevant employment legislation;

- (j) Support the Council's corporate and departmental aims and policies and comply with any Council policy;
  - (k) Comply with Data Protection Legislation;
  - (l) Apply the Welsh Government approved approach as standard to Supplier selection;
  - (m) Be procured in accordance with all procurement planning guidance issued by the Corporate Procurement Manager.
- 2.2 For the avoidance of doubt, the Appropriate Chief Officer shall ensure that where the estimated Contract Value or amount of a proposed Contract (or series of Contracts) is likely to be equal to or to exceed the thresholds set by the Legal Requirements for Contracts, then the tendering procedures to be adopted must be in accordance with the Regulations, and any statutory provision relating thereto.
- 2.3 Contracts for the procurement of works, goods or services may be subdivided into lots where appropriate and in accordance with the Regulations but lots should not be used where the result would be the avoidance or effect the application of the Contract Procedure Rules.
- 2.4 The procurement of goods, services and works shall not be artificially over estimated or under-estimated which would result in either the avoidance of the Contract Procedure Rules or which would affect the application of the Contract Procedure Rules.
- 2.5 It shall be a condition of any contract between the Council and any person (not being an Officer of the Council) who is required to supervise a Contract on the Council's behalf that, in relation to the Contract, they shall comply with the requirements of these Contract Procedure Rules and the Council's Financial Procedure Rules.
- 2.6 The Monitoring Officer with the agreement of the Chief Finance Officer may issue procurement guidance or protocols, and all Chief Officers and any person who is required to supervise a Contract on behalf of the Council shall have due regard to any such guidance or protocol.
- 2.7 The use of the Council's in-house services and Internal Providers is not covered by or subject to these Contract Procedure Rules. Any contract subsequently let by the in-house services and Internal Providers to sub-contractors will be let in accordance with these Contract Procedure Rules.
- 2.8 Any failure by officers to comply with any of the provisions of these Contract Procedure Rules or associated guidance adopted by the Council may result in disciplinary action.
- 2.9 Appropriate authority must be in place before any procurement is carried out on behalf of the Council.

- 2.10 Any dispute regarding the interpretation of these Contract Procedure Rules shall be referred to the Chief Officer Legal, HR and Regulatory Services and Monitoring Officer for resolution in consultation with the Corporate Procurement Manager.
- 2.11 These Contract Procedure Rules deal only with procurements conducted under the Regulations. Where a procurement is required to be conducted under the Concession Contracts Regulations 2016 and the Utilities Contracts Regulations 2016, authority must be sought from the Appropriate Body by way of an exemption to these Contract Procedure Rules in order to conduct such a procurement pursuant to Rule 3.1.7.

### **3. EXEMPTIONS AND WAIVER**

#### **Exemptions to the Contract Procedure Rules**

- 3.1 The Contract Procedure Rules do not apply to the situations set out in Rules 3.1.1 to 3.1.7.
- 3.1.1 For the acquisition or disposal of land, unless it involves a development agreement which would require a tender process.
- 3.1.2 In the case of professional arrangements in accordance with Regulation 10 of the Regulations between the Councils Solicitor and Counsel or external Solicitors, the Chief Officer Legal, HR and Regulatory Services and Monitoring Officer will not be expected to comply with the requirements of this Rule when instructing and briefing Counsel or Solicitors. The Chief Officer Legal, HR and Regulatory Services and Monitoring Officer will make arrangements to ensure that a record is kept of all such instructions or briefs together with a record of Counsel's/ Solicitors fees.
- 3.1.3 For the carrying out of security works where the publication of documents in accordance with the tendering procedure could prejudice the security of the work to be done, provided the method of tendering has been approved by the Appropriate Body.
- 3.1.4 Employment Contracts which make an individual a direct employee of the Council.
- 3.1.5 Contracts between entities within the public sector as prescribed in Regulation 12 of the Regulations, including those Contracts where Regulation 12 would be applicable if the Contract Value was not below the financial thresholds specified in or by the Regulations, provided the arrangement has been approved by the Appropriate Body.
- 3.1.6 In an emergency situation in which injury or damage to persons or property is threatened in which case the Appropriate Chief Officer may

take any necessary action but must report the circumstances and the action taken to the next meeting of the Appropriate Body.

- 3.1.7 Where a procurement is required to be conducted under the Concession Contracts Regulations 2016 or the Utilities Contracts Regulations 2016, provided the use of the Concession Contracts Regulations 2016 or the Utilities Contracts Regulations 2016 has been approved by the Appropriate Body.

## **Waivers**

- 3.2 Waiver from obtaining quotations or tendering will only apply to the criteria listed in Rules 3.2.1 to 3.2.12 below and any waiver must be obtained, either:

- (a) in respect of any new Contract from the Appropriate Body where the value of the Contract exceeds £100,000; or
- (b) in respect of any new Contract in accordance with the Council's Scheme of Delegation of Functions where the value of the Contract does not exceed £100,000.

- 3.2.1 Where no quotes or tenders have been received in response to the Council's procedure for obtaining competitive offers. This is to include the open procedure, restricted procedure, competitive dialogue, competitive procedure with negotiation, innovative partnerships procedures where procurement falls within the scope of the Regulations.

- 3.2.2 The Contract involved is purely for the purpose of research, experiment, study or development under the conditions stated in the Regulations.

- 3.2.3 The works/goods/services can be provided only by a particular economic operator for any of the following reasons:—

- (i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance,
- (ii) competition is absent for technical reasons,
- (iii) the protection of exclusive rights, including intellectual property rights,

but only, in the case of paragraphs (ii) and (iii), where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement.

- 3.2.4 Extreme urgency brought about by events unforeseeable by the Council and in accordance with the strict conditions contained in the Regulations.



- 3.2.5 New works/services, constituting a repetition of existing works/services and ordered in accordance with the strict conditions contained in the Regulations, subject to approval in accordance with Rule 3.5
- 3.2.6 A Contract awarded to the successful tenderer or one of them after a design contest.
- 3.2.7 For supplies quoted and purchased on a commodity market.
- 3.2.8 For the purchase of supplies on particularly advantageous terms from a Supplier which is definitely winding up its business activities, or from the receivers or liquidators of an insolvency, bankruptcy, an arrangement with creditors or a similar procedure.
- 3.2.9 In the case of Contracts for services entered into in pursuance of powers under the National Health Service and Community Care Act 1990, the Children Act 1989, Children's (Leaving Care) Act 2000 and Social Services and Wellbeing (Wales) Act 2014 for the benefit of an individual client, the Corporate Director Social Services and Wellbeing, insofar as it is consistent with the law, will make appropriate arrangements for provision.
- 3.2.10 Where a tendering procedure is prescribed by legislation.
- 3.2.11 Contracts which can only be performed by a statutory undertaker.
- 3.2.12 Where goods, services and works are procured by another public body on behalf of the Council or through collaborative arrangements awarded via the National Procurement Service or the Regional Delivery Group or by the Council through a Contract properly let by another such organisation, then those organisations Procurement / Contract Procedure Rules will apply subject to compliance with European Union and Procurement Law of England and Wales.

### **Modifications to existing Contracts and Framework Agreements**

- 3.3. Contracts and frameworks agreements may be modified without the requirement for a new procurement procedure in accordance with Rules 3.3.1 to Rules 3.3.6:
  - 3.3.1 Where the modifications in a Contract or Framework Agreement have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses or options, provided that such clauses:
    - (a) state the scope and nature of possible modifications or options as well as the conditions under which they may be used, and
    - (b) do not provide for modifications or options that would alter the overall nature of the Contract or the Framework Agreement;

3.3.2 Subject to Rule 3. 4 and Rule 3.5 where the modification(s) in a Contract or Framework Agreement is for additional works, services or supplies by the original Contractor that have become necessary and were not included in the initial procurement, and where a change of Contractor:

- (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, and
- (ii) would cause significant inconvenience or substantial duplication of costs for the Council,

provided that any increase in price does not exceed 50% of the value of the original Contract;

For the purpose of the calculation of the price the updated figure shall be the reference figure when the Contract includes an indexation clause.

3.3.3 Where all of the following conditions are fulfilled:

- (i) the need for modification has been brought about by circumstances which the Council having been duly diligent could not have foreseen;
- (ii) the modification does not alter the overall nature of the Contract;
- (iii) any increase in price does not exceed 50% of the value of the original Contract or Framework Agreement.

For the purpose of the calculation of the price the updated figure shall be the reference figure when the Contract includes an indexation clause.

3.3.4 Where a new Contractor replaces the one to which the Council had initially awarded the Contract as a consequence of:

- (i) an unequivocal review clause or option in conformity with Rule 3.3.1, or
- (ii) universal or partial succession into the position of the initial Contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail

other substantial modifications to the Contract and is not aimed at circumventing the application of the Regulations.

3.3.5 Where the modifications, irrespective of their value, are not substantial. A modification shall be considered substantial where one or more of the following conditions is met:

- (i.) the modification renders the Contract or the Framework Agreement materially different in character from the one initially concluded; or
- (ii.) the modification introduces conditions which, had they been part of the initial procurement procedure, would have—
  - (a) allowed for the admission of other candidates than those initially selected,
  - (b) allowed for the acceptance of a tender other than that originally accepted, or
  - (c) attracted additional participants in the procurement procedure;
- (iii.) the modification changes the economic balance of the Contract or the Framework Agreement in favour of the Contractor in a manner which was not provided for in the initial Contract or Framework Agreement;
- (iv.) the modification extends the scope of the Contract or Framework Agreement considerably;
- (v.) a new Contractor replaces the one to which the Contracting authority had initially awarded the Contract in cases other than those provided for in Rule 3.3.4

3.3.6 Where the value of the modification is below both of the following values:—

- (i) the relevant applicable financial thresholds contained in the Regulations, and
- (ii) 10% of the initial Contract Value for service and supply Contracts and 15% of the initial Contract Value for works Contracts,

provided that the modification does not alter the overall nature of the Contract or Framework Agreement.

Where several successive modifications are made, the value shall be the net cumulative value of the successive modifications and the

updated figure shall be the reference figure when the Contract includes an indexation clause.

- 3.4 Where several successive modifications are made:—
- (a) the limitations imposed by the proviso at the end of Rule 3.3.2 and by Rule 3.3.3 (iii) shall apply to the value of each modification; and
  - (b) such successive modifications shall not be aimed at circumventing the Regulations.
- 3.5 Where the Council has modified a Contract in accordance with Rule 3.3.2 or Rule 3.3.3 the Council is required to send a notice to that effect, in accordance with Regulation 51 of the Regulations for publication. Such a notice shall contain the information set out in Regulation 72.4 of the Regulations.
- 3.6 Approval to any modification of an existing Contract or Framework Agreement must be obtained, either:
- (a) from the Appropriate Body where the value of the modification of a Contract or Framework Agreement exceeds £100,000; or
  - (b) in accordance with the Council's Scheme of Delegation of Functions where the value of the modification of a Contract or Framework Agreement does not exceed £100,000.

### **Notification of Waiver and Modification**

- 3.7 If the Appropriate Chief Officer is seeking from the Appropriate Body a waiver from the Council's Contract Procedure Rules under Rule 3.2 or a modification to an existing Contract or Framework Agreement under Rule 3.3, the report to the Appropriate Body shall set out the reason for requiring the waiver or modification and the Contract Procedure Rule(s) from which the waiver or modification is required. The report shall include a legal and financial statement and shall highlight any future commitments (whether or not of a financial character) which the proposed Contract might entail.
- 3.8 Where the value of any waiver or modification does not exceed £100,000, the reasons for requiring the waiver or modification must be approved by the Corporate Procurement Manager, and recorded in accordance with the Scheme of Delegation of Functions.
- 3.9 Where a waiver is sought by the Appropriate Chief Officer in respect of obtaining quotations or tendering, the report to the Appropriate Body or record of the decision under the Council's Scheme of Delegation of Functions shall in addition to the requirements of Rules 3.7 and 3.8 justify the use of an alternative method of selection so that propriety, value for money and compliance with Legal requirements can be demonstrated.

- 3.10 Purchasing arrangements made for the Council by the Corporate Procurement Manager do not constitute exceptions as such, because they are made under the full provisions of these Rules.
- 3.11 Correct use of these arrangements, as advised by the Corporate Procurement Manager will be sufficient to ensure officers meet their responsibilities for compliance. Such arrangements are mandatory and include, but are not limited to:
- 3.11.1 Purchasing Frameworks endorsed for use by the Council, where items are specified and costed and the option of a Direct Award has been provided for.i.e., no requirement to undertake a further mini competition.
  - 3.11.2 Collaborative procurement arrangements undertaken by, or in consultation with the Corporate Procurement Manager.
  - 3.11.3 Electronic systems and catalogues endorsed for use by the Council in procurement.
- 3.12 The Appropriate Chief Officer must ascertain whether there is a Framework Agreement approved by the Corporate Procurement Manager for use by the Council. Where a Framework Agreement is available, it must be used in accordance with the guidance provided by the Corporate Procurement Manager.
- 3.13 Any joint procurement arrangements with other local authorities and or public sector bodies including membership or use of any consortia must be approved by the Corporate Procurement Manager.
- 3.14 Established framework and consortia arrangements endorsed by the Corporate Procurement Manager for use by the Council shall be mandatory except where there is an applicable waiver or exemption, a copy of which shall be sent to the Corporate Procurement Manager.
- 3.15 Contracts to be awarded on the basis of a Framework Agreement must be in conformity with the Regulations. Where it is necessary to run a further mini competition, any subsequent mini-competition must be in accordance with the terms of the original Framework Agreement (except for the requirement to advertise and those stages in the procurement that are not applicable to a framework).
- 3.16 These Contract Procedure Rules do not apply to Contracts let by school or college governing bodies acting in accordance with their approved schemes of delegation or contract procedure rules.

#### **4. Delegated Authority to Enter into Contracts**

- 4.1 Each Chief Officer has been allocated the following functions under Scheme B2 of the Council's Scheme of Delegation of Functions (Functions delegated

to Chief Officers without consultation and call-in) which shall be exercised where any proposed Contract administered by their Directorate/Office has an estimated value not exceeding £1,000,000.00:

- (a) To authorise the invitation of tenders;
- (b) To accept the Most Economically Advantageous Tender received and enter into a Contract and any further deeds and documents which are supplemental to the Contract.

4.2 Each Cabinet Member has been allocated the following functions under Scheme A of the Council's Scheme of Delegation of Functions (Cabinet Functions delegated to Individual Cabinet Members) which shall be exercised where any proposed Contract falling within the Cabinet Member's portfolio has an estimated value exceeding £1,000,000.00 but not exceeding £5,000,000.00:

- (a) To authorise the invitation of tenders;
- (b) To accept the Most Economically Advantageous Tender received and enter into a Contract and any further deeds and documents which are supplemental to the Contract.

4.3 Where the estimated value of any proposed Contract exceeds £5,000,000.00, the authority to do any of the following shall be sought from the Appropriate Body:

- (a) To authorise the invitation of tenders;
- (b) To accept the Most Economically Advantageous Tender received and enter into a Contract and any further deeds and documents which are supplemental to the Contract.

## **5. Declaration of Interest**

5.1 No member, employee or agent of the Council shall improperly use their position to obtain any personal or private benefit from any procurement entered into by the Council.

5.2 Members and employees of the Council shall comply with the requirements of Section 117 of the Local Government Act 1972, the Bribery Act 2010, and the Officers and Members code of conduct set out in the Constitution in respect of the declaration of interests in Contracts with the Council.

5.3 Such interests must be declared to the Monitoring Officer for inclusion in the appropriate registers

5.4 Officers must complete a conflict of interest form and declaration of interest form prior to participating in any tender exercise and a copy can be found on the Corporate Procurement Page.

## **6. Selective Tendering, Invitation of Tenders and Quotations**

6.1 Subject to any overriding Legislative Requirements, all procurements shall be invited in accordance with either Rules 7, 8 or 9.

6.2 The appropriate service budget holder shall prepare the relevant part of the Pre-tender Client Information Sheet for all invitations to tender and quotations and submit that to the Corporate Procurement Manager for approval.

6.3 A record of tenders and quotations shall be maintained by the Chief Officer Legal, HR and Regulatory Services and Monitoring Officer, on the Corporate Contracts Register.

6.4 In the case of procurements that are required to be undertaken in accordance with the Regulations, the advice of the Corporate Procurement Manager must be sought at the outset and at all subsequent stages of the procurement process, and the Pre-Tender Client Information Sheet must be completed. The Regulations will take precedence over the Contract Procedure Rules.

6.5 The value of a procurement means the estimated total monetary value over its full duration, including any extension options. Where there is no fixed term for the Contract, the value of the Contract shall be taken to be the estimated value of the Contract over a period of four years. No procurement may be artificially split to avoid compliance with these Contract Procedure Rules and Legal Requirements. This Rule shall, however, not be construed as to avoid the requirements relating to “lots” under the Regulations.

6.6 For works Contracts all Contractors must be registered and verified on Constructionline. Constructionline show the Contractors and categories which have been pre-assessed with a recommended contract value. The recommended contract value is based on a financial risk assessment and is the maximum limit of work that must be placed with a Contractor without additional safeguards.

6.7 The basis of selection for companies on Constructionline shall be by way of rotation and/or the suitability of Contractors to undertake the project. Reasons for such choice must be recorded

### **Quotations**

6.8 The invitation to submit quotations must include the specification, terms and conditions and evaluation criteria/weightings.

- 6.9 A reasonable time must be allowed for Suppliers to return bids. Unless otherwise dictated by urgency, a minimum time period of not less than 14 days must be allowed for the return of quotations.
- 6.10 In accordance with the requirements of the Scheme of Delegation of Functions a record shall be kept by the Appropriate Chief Officer in the prescribed form. In any case in which at least three alternative written offers or quotations were not obtained, the Appropriate Chief Officer shall record the reasons why it was considered impracticable to do so. This should then be recorded on the Corporate Contracts Register.

## **Tenders**

- 6.11 All of the invitation to tender documentation, including specification, evaluation criteria/weightings, must be approved by the Corporate Procurement Manager.
- 6.12 A minimum time period of not less than 14 days must be allowed for the return of tenders, except where the tender is subject to the Regulations in which case the time periods specified in the Regulations are applicable.
- 6.13 For all Contracts the Council must consider how what is proposed to be procured might improve the economic, social and environmental and cultural well-being of the area and how, in conducting the procurement process, it might act with a view to securing that improvement. The Council must consider the sustainable development principles and the well-being objectives that the Council has adopted in accordance with the Well-being of Future Generations (Wales) Act 2015. Guidance on delivering social value through procurement is available on the Corporate Procurement Page on the Intranet.
- 6.14 Where appropriate the Council will need to include Community Benefits clauses to maximise the benefits that such clauses can bring. Where Community Benefits are included in any tender issued by the Council, this must be mentioned in the tender advertisement, indicating whether they are Core or Non-Core.
- 6.15 Every written Contract shall include clauses in a form approved by the Monitoring Officer relating to the following matters as a minimum.
- 6.15.1 Data Protection;
  - 6.15.2 Freedom of Information;
  - 6.15.3 Modern Slavery;
  - 6.15.4 Bribery and Corruption;
  - 6.15.5 Equalities and Human Rights;
  - 6.15.6 Welsh Language Standards;
  - 6.15.7 Audit.

Template provisions for the aforementioned matters can be found on the Corporate Procurement Page on the Intranet.



- 6.16 Where a relevant specification issued by the British Standards Institution is current at the date of the tender all Council specifications shall require as a minimum that the goods and materials used in the execution of the Contract shall be in accordance with that specification or an equivalent.
- 6.17 The Council is a signatory to the UK Steel Charter. The Appropriate Chief Officer must consider whether fulfilment of any of the steps contained within the Charter are applicable to the Contract being procured and if so liaise with the Corporate Procurement Manager to ensure that appropriate provisions are contained within the procurement documents. A copy of the UK Steel Charter can be found on the Corporate Procurement Intranet page.
- 6.18 The Council is a signatory to the Welsh Government Code of Practice – Ethical Employment in the Supply Chain. The Appropriate Chief Officer must ensure that employment practices are considered as part of the procurement process and liaise with the Corporate Procurement Manager to ensure that appropriate provisions are contained within the procurement documents. A copy of the Welsh Government Code of Practice – Ethical Employment in the Supply Chain can be found on the Corporate Procurement Intranet page.
- 6.19 The Council has adopted the principles contained within the Welsh Government Policy on Project Bank Accounts. The Appropriate Chief Officer must consider whether payment through a project bank account (PBA) is appropriate for any construction or infrastructure Contract (or other Contract with a significant sub-contracting supply chain) of over 6 months duration and valued at £2 million or more and where there are sub-contracting opportunities valued at 1% or more of the contract value. The use of payment through a PBA for such Contracts will be required unless there are compelling reasons not to do so. The use of payment through a PBA must be applied to all construction and infrastructure projects and any other appropriate contracts valued at £2m or more which are part or fully funded by Welsh Government where the terms of such funding require a PBA to be applied.

## **7. Thresholds and Advertising Requirements**

- 7.1 Thresholds for procurement do not apply to existing Framework Agreements endorsed for use by the Council.
- 7.2 Thresholds for all goods & services (except works Contracts) and advertising requirements are as follows and are set out in the Summary of Advertising (a copy of which can be found on the Corporate Procurement Page):
- 7.2.1 Up to £5,000 it is necessary only to demonstrate that value for money is being achieved, unless any grant funding conditions dictate otherwise.
- 7.2.2 Over £5,000 to £25,000 Minimum of 3 quotes to be requested from businesses preferably registered on Sell2Wales, unless any grant funding conditions dictate otherwise. All quotes must be conducted electronically.

- 7.2.3 Over £25,000 to £100,000 all requirements to be openly advertised on Sell2Wales where practical and providing it represents best value for money. A minimum of three quotations must be invited when following a restricted procedure or when an advert has not been issued, unless any grant funding conditions dictate otherwise. All quotes must be conducted electronically.
  - 7.2.4 Over £100,000 to the Regulations thresholds, requirements must be tendered, and advertised on Sell2Wales (as a minimum). Where the restricted procedure is used a minimum of five tenders must be invited, unless any grant funding conditions dictate otherwise. All tenders must be conducted electronically.
  - 7.2.5 Above the Regulations threshold, requirements must be tendered and advertised on Find a Tender, together with such other advertising as directed by the Corporate Procurement Manager. All tenders must be conducted electronically.
- 7.3 Thresholds for Works Contracts and advertising requirements are as follows and are set out in the Summary of Advertising (a copy of which can be found on the Corporate Procurement Page):
- 7.3.1 Contract Up to £5,000 it is necessary only to demonstrate that value for money is being achieved, using contractors with Safety Schemes in Procurement (SSIP) accreditation and registered and verified on Constructionline unless any Grant conditions dictate otherwise.
  - 7.3.2 Over £5,000 to £25,000 quotations are to be requested from a minimum of three prospective Tenderers with Safety Schemes in Procurement (SSIP) accreditation and registered and verified on Constructionline, unless any grant conditions dictate otherwise. Where the minimum number of Tenderers required through Constructionline are not available, the Corporate Procurement Unit will put an advertisement on Sell2Wales for the requirement. All quotes must be conducted electronically.
  - 7.3.3 Over £25,000 to £250,000 quotations are to be requested from a minimum of five prospective Tenderers with Safety Schemes in Procurement (SSIP) accreditation and registered and verified on Constructionline, ./ the minimum number of Tenderers required through Constructionline are not available, the Corporate Procurement Unit will put an advertisement on Sell2Wales for the requirement. All quotes must be conducted electronically.
  - 7.3.4 Over £250,000 to the Regulations thresholds requirements must be tendered and advertised on Sell2Wales, unless any grant funding conditions dictate otherwise. All tenders must be conducted electronically.
  - 7.3.5 Above the Regulations thresholds, requirements must be tendered and advertised on Find a Tender, together with such other

advertising as directed by the Corporate Procurement Manager. All tenders must be conducted electronically.

7.4 Where it is considered appropriate to use additional advertising e.g. specialist requirements, they should be placed in one or more of the following:

- A local newspaper.
- Trade Journal.

7.5 Where additional advertisements have been placed as outlined in Rule 7.4 the advertisement shall:

- Specify details of the Contract into which the Council wishes to enter.
- Invite persons or bodies interested to apply for permission to tender.
- Specify a time limit of not less than 14 days within which such applications or tenders are to be received by the Council, except where legislation or funding conditions dictates a different time period. Indicate the criteria and weighting to be used to select Tenderer and award the Contract, unless this is specified in the ITT.

## **8. Pre-Tender Market Research and Consultation**

8.1 The Council may conduct market consultation prior to the issue of any Tender. This may involve seeking or accepting advice from the market. This advice can be used in the planning and conducting of the procurement process as long as it does not distort competition or violate the principles of non-discrimination and transparency.

## **9. Procurement by Consultants**

9.1 Where the Council uses consultants to act on its behalf in relation to any procurement, then the Appropriate Chief Officer shall ensure that the consultants carry out any procurement in accordance with these Contract Procedure Rules.

9.2 All decisions must be made in accordance with the Council's Scheme of Delegation of Functions.

9.3 No consultant shall make any decision on whether to award a Contract or who a Contract should be awarded to. The Appropriate Chief Officer shall ensure that the consultant's performance in relation to procurement is in accordance with these Contract Procedure Rules and legislation.

9.4 Where the Council uses consultants to act on its behalf in relation to any procurement the consultant must declare any potential conflict of interest that may arise to the relevant Appropriate Chief Officer prior to the commencement of the procurement process or at such time that the Contractor becomes aware of such a potential conflict of interest.

- 9.5 Where the Appropriate Chief Officer considers that such a conflict of interest is significant the consultant shall not be allowed to participate in the procurement process.

## **10. Other Procurement Procedures**

- 10.1 The use of the negotiated procedure without prior publication, innovative partnerships, competitive procedure with negotiation and competitive dialogue as defined in the Regulations, can only be used in exceptional circumstances as directed by the Chief Finance Officer and with prior consultation with the appropriate Cabinet Member and the Monitoring Officer.
- 10.2 The use of reserved, concessionary contracts and dynamic purchasing systems may only be used following consultation and prior approval by the Corporate Procurement Manager.

## **11. Naming Products Sub-Contractors and Suppliers**

- 11.1 The principle of non-discriminatory and equal treatment is undermined by the naming of products, Suppliers or sub-Contractors. Equivalent are nearly always able to be specified and will be advertised with the wording “or equivalent” where possible.
- 11.2 Where the Council has determined that a particular type of product or provision of service will be stipulated as an essential requirement of a Contract then this must be approved by the Appropriate Chief Officer following consultation with the Corporate Procurement Manager.

## **12. Electronic Tendering**

- 12.1 An electronic quote and tender facility now supersedes the use of paper tenders in line with the Regulations. All electronic quotes and tenders must be issued using a portal approved by the Corporate Procurement Manager. All relevant staff must be fully trained in the use of the system and set up to use the facility by the Corporate Procurement Manager.
- 12.2 For all quotes and tenders issued, the awarded Contract must be uploaded to the Corporate Contracts Register on the approved portal.
- 12.3 An advertisement must be placed in accordance with Rule 7. Any advert placed on sell2wales must alert prospective bidders to the requirement and the need to register on the approved etenderwales portal. The advert should state that bidders must have JAVA to access the etenderwales portal and respond electronically.
- 12.4 All correspondence between the Council and bidders must be concluded via the approved portal to maintain a defined audit trail. Under no circumstances must email correspondence outside the portal be used. Any verbal communication specific to the quote or tender must only be communicated through the relevant category specialist and must be confirmed via the portal. All clarification questions must be broadcast to all prospective bidders, where applicable i.e. not commercially sensitive.

- 12.5 The requirements for the submissions of bids must be set out in the Invitation to Tender (ITT) document issued to bidders via the portal. This will specify the return date and time, which will normally be 12 noon on the agreed date. The time and date when bidders upload their completed documents onto the system is recorded and forms part of an audit record.
- 12.6 Any late bids submitted will be recorded by the system and must be disqualified. A report will be required from the system administrator of the portal that there has been no system malfunction if a bidder challenges the disqualification.
- 12.7 Tenders must be opened electronically in accordance with Rule 14.

### **13. Submission and Custody of Tenders and Quotations**

- 13.1 Where tenders are invited in accordance with these Contract Procedure Rules or otherwise as determined by the Appropriate Body, the requirements for submission of tenders shall be set out in the invitation to tender document.
- 13.2 Electronic tenders and quotes are held in the approved portal and are inaccessible until the specified closing date and time.

### **14. Opening of Electronic Tenders**

- 14.1 Quotations or tenders for requirements having an estimated value or amount of £5,000 and not exceeding £100,000 shall be opened via the approved portal at the same time in the presence of one officer from the corporate procurement team, this is to include the technical and commercial envelope.
- 14.2 Tenders for Contracts having an estimated value or amount over £100,000 and not exceeding £1,000,000 shall be opened at the same time in the presence of two officers, one designated by the Monitoring Officer and the other an officer from the corporate procurement team, this is to include the technical and commercial envelope.
- 14.3 Tenders, including the technical and commercial envelope, having an aggregated estimated value or amount exceeding £1,000,000 shall be opened at the same time in the presence of the Monitoring Officer or their nominated representative and Two further officers usually an officer from Democratic Services and an officer from the corporate procurement team.
- 14.4 All tenders opened in accordance with rule 14 shall include the Technical and Commercial envelope within the approved portal.
- 14.5 A record shall be kept of all tenders and quotations received through the approved portal approved by the Monitoring Officer, including any reasons for disqualification.

### **15. Amendment of Tenders**

- 15.1 If an error is identified in the invitation to tender documentation before the closing date for the return of tenders, all Tenderers shall be appraised of the error and invited to adjust their tenders.
- 15.2 If an error in the invitation to tender documentation is identified after the closing date for the return of tenders, but prior to opening of tenders, all Tenderers shall be given details of the error and afforded the opportunity of withdrawing the tender or submitting an amended tender.
- 15.3 Except as provided in this Rule 15, a tender may not be amended by the Tenderer after it has been received unless examination of it reveals errors or discrepancies which would affect the tender figure in an otherwise successful tender, in which case:
- 15.3.1 If the error is not arithmetical the Tenderer shall be given details of the error(s) and shall be given the opportunity of confirming without amendment or withdrawing the tender, or
- 15.3.2 If the error is arithmetical the Appropriate Chief Officer shall correct the error(s) provided that, apart from these genuine arithmetic error(s), no other adjustment revision or qualification is permitted.

## **16. Post-Tender Negotiation and Clarification**

- 16.1 Where procurement is conducted pursuant to the Regulations through either the open, restricted, innovative partnerships or competitive dialogue procedures, no post-tender negotiations are permitted. Any negotiation in respect of the competitive procedure with negotiation must comply with the requirements of the Regulations.
- 16.2 The responsible officer may seek clarification from tenderers where appropriate in consultation with the Corporate Procurement Manager.
- 16.3 Where procurements do not exceed the Regulations thresholds the Appropriate Chief Officer may authorise negotiations in exceptional circumstances, following the opening of tenders and before acceptance, subject to compliance with any legislative requirements, and only when:
- (a) Amendments have been made to any relevant specification since the invitation of tenders, which could not have been foreseen at the invitation stage, or
  - (b) The volume of goods, works or services required by the Council has substantially increased or decreased since the invitation of tenders, or
  - (c) Only one tender has been received, or
  - (d) Tender prices exceed financial targets predetermined by the Council, the Cabinet or the appropriate Committee,

In all instances, the possibility of such negotiations must have been indicated in the invitation to tender.

- 16.4 Negotiations shall be conducted in a manner which treats all Tenderers equally and is non-discriminatory and transparent at all times during the procurement process, and a full record of the negotiations shall be made by the Appropriate Chief Officer which shall include the names of the officers involved, minutes of all meetings and copies of all relevant correspondence and other documents.

## **17. Evaluation of Tenders**

- 17.1 The Appropriate Chief Officer shall examine tenders in accordance with predetermined evaluation criteria.
- 17.2 In respect of all tenders the tender criteria shall be Most Economically Advantageous Tender (which can be the lowest/highest price only where appropriate) and the evaluation criteria shall as a minimum be listed in the Invitation To Tender documentation in order of importance. Any particular scoring or weighting attributable to any criteria and sub-criteria must be clearly stated. In addition, the criteria must be strictly observed and remain unchanged at all times throughout the Contract award procedure.

## **18. Acceptance and Award of Tenders**

- 18.1 A Contract shall only be awarded subject to the tender evaluation criteria specified in the invitation to tender document.
- 18.2 Tenders for Contracts having an estimated value exceeding £5,000,000 may be invited and accepted only by the Appropriate Body unless the power to do so has been specifically allocated or delegated to the appropriate Cabinet Member or Appropriate Chief Officer.
- 18.3 No tender relating to a Contract to which Sections 2 to 9 of the Local Government (Contracts) Act 1997 apply, shall be accepted without the approval of the Monitoring Officer.
- 18.4 Before a tender is accepted other than for the sale of goods the Appropriate Chief Officer must obtain the Chief Finance Officer's confirmation that the Tenderer's financial standing is satisfactory, unless the Tenderer has already been approved using the prequalification of the tender process.
- 18.5 The award of any Contract shall be in accordance with the Regulations and any other Legal Requirements.
- 18.6 If the award of any Contract is subject to the Regulations then there shall be a standstill period of at least ten calendar days between the communication of the decision of the intention to award the Contract being notified to those parties who were selected to tender, or who applied to be selected to tender, and the entering into of that Contract.

- 18.7 Standstill letters issued as part of a tender process under the Regulations must not be issued prior to confirmation of award in accordance with the Council's constitution.
- 18.8 Feedback to unsuccessful tenderers must be included in the standstill letters and must include the characteristics and relative advantages of the tender selected. For Contracts subject to the Regulations, the requirements of the Regulations must also be complied with.
- 18.9 Where a tender above the Regulations threshold has been tendered and advertised on Sell2Wales, the Council shall publish a Contract Award Notice on Sell2Wales which will also be included on Find a Tender, as soon as possible after the decision to award and in any event no later than 30 calendar days after the date of award of the Contract.
- 18.10 All correspondence notifying evaluation outcomes must be communicated through the approved portal

## **19. Letters of Intent**

- 19.1 Letters of Intent shall only be used with the agreement of the Chief Officer Legal, HR and Regulatory Services and Monitoring Officer and only in very exceptional circumstances.
- 19.2 Where the terms and conditions of the Contract are not fully agreed no Contractor shall be allowed on site to begin preliminary works until a full risk assessment has been carried out by the Appropriate Chief Officer as to possible implications to the Council by the Contractor being allowed to start on site before the Contract terms and conditions have been finalised.

## **20. Execution of Contracts**

- 20.1 Every Contract not exceeding £500,000 in amount or value shall be in writing in a form approved by the Monitoring Officer such form being the Form of Tender. However the Form of Tender should not be used in the following situations and a formal Contract must be entered into:
- (a) where the appropriate Directorate has assessed the level of risk associated with the Contract and it deems the level of risk to be high; or
  - (b) where the Contract must be executed under seal.

The Form of Tender must be issued as part of the tender and must be signed and returned by the bidder. On contract award the signed Form of Tender must be issued with the award letter, signed by either the Appropriate Chief Officer of the Monitoring Officer, or another officer authorised in writing to sign on behalf of the Appropriate Chief Officer or the Monitoring Officer. Both Parties are to keep a signed Form of Tender.

- 20.2 Every Contract, including frameworks which exceeds £500,000 in amount or value shall be referred to the Solicitor for the Council for approval.



- 20.3 Contracts in writing or official orders not exceeding £500,000 in amount or value may be signed either by the Appropriate Chief Officer or by an officer in writing authorised to approve on behalf of the Appropriate Chief Officer.
- 20.4 Every Contract for Works (other than Framework Agreements ) exceeding £1,000,000 shall require a performance bond and for Contracts below this limit the Appropriate Chief Officer shall determine the necessity for a Performance Bond based on an assessment of risk for that Contract. A Surety shall be approved by the Chief Finance Officer.
- 20.5 A risk assessment shall be conducted for all service Contracts to determine the necessity for a performance bond. The approval of the Chief Finance Officer is required where a performance bond is not deemed necessary for service Contracts in excess of £1,000,000 in value.
- 20.6 Contracts not exceeding £500,000 may be signed electronically except in the following situations:
- (a) where the appropriate Directorate has assessed the level of risk associated with the Contract and it deems the level of risk to be high; or
  - (b) where the Contract must be executed under seal.

The use of electronic signature must be in accordance with the procedure set down by the Corporate Procurement Manager.

## **21. Assignment and Novation**

- 21.1 Any Contract subject to potential assignment or novation must be referred to the Monitoring Officer at the earliest possible instance.

## **22. Termination of Contracts**

- 22.1 For any Contract, or part thereof, exceeding £100,000 in value, early termination shall be approved by the Appropriate Chief Officer in consultation with the Monitoring Officer and the Chief Finance Officer and must be in accordance with the termination provisions set out in the Contract. Contracts of a lesser value may be terminated early by agreement prior to the expiry date or in accordance with the termination provisions set out in the Contract.

## **23. Financial Limits**

- 23.1 With the exception of the financial limit specified in Rule 20, which may be varied only by the Council, the financial limits specified in these Contract Procedure Rules or any of them may be varied at any time by the Chief Finance Officer in consultation with the Monitoring Officer, but any alterations shall be reported to the next meeting of the Council.

## **24. Record and Document Retention and Control**

- 24.1 A full report of all Contracts awarded should be written and kept electronically. (A checklist of what the report should contain can be found on the Corporate Procurement Page.)
- 24.2 A full record of all documents used including the Delegated Power to invite and accept, any other internal approvals, should be scanned and uploaded into the approved portal or procurements 'o' drive against the specific Contract reference number.
- 24.3 All Contracts under seal i.e. Deeds (inc. Tenders) must be retained for a minimum of 12 years after the term of the Contract has expired. Contracts which have not been sealed must be retained for a minimum of 6 years after the term of the Contract has expired, unless a longer period is required by legislation or grant conditions.
- 24.4 Unsuccessful tender and pre-qualifying documents which have been accepted for tender purposes will be retained for a minimum period of 2 years after the start of the Contract within the approved portal.
- 24.5 Any tender which is rejected or disqualified at the time of opening will be notified via the approved portal.
- 24.6 All request for quotations must be retained for a minimum period of 2 years after the term of the Contract has expired.
- 24.7 Where Contracts are subject to the Regulations, they must also comply with the record, document retention and control requirements of the Regulations.

## **25. Contract Management**

- 25.1 A Contract must not start until the Contract has been signed or sealed by both parties and dated. Directorates must allow time for this in their forward work plan.
- 25.2 Within ten calendar days of the start of the Contract, the directorate must add the details of the Contract onto the Corporate Contracts Register and record all the required information within etender wales.
- These details must be maintained and updated as and when required to do so. Officers should contact the Corporate Procurement Manager if training is required.
- 25.3 The Directorate shall be the Contract manager for the Contracts for which they are responsible for up to the Regulations threshold, but may authorise another officer to have day-to-day responsibility for managing the Contract. For Contracts over the Regulations threshold, the directorate must appoint a dedicated Contract manager with appropriate skills and experience.
- 25.4 The Contract manager is responsible for:
- (a) Managing the Contract and ensuring that it is carried out in accordance with its terms and conditions;
  - (b) Monitoring the Contractor's performance and carrying out mid-Contract reviews to determine ongoing value for money;

- (c) Ensuring that the Contractor maintains the insurance policies required by the Contract; and
  - (d) Keeping a record of all payments, claims, monitoring, changes and certificates under the Contract.
- 25.5 The Contract manager must consult the Monitoring Officer for consideration of the Council's legal position:
- (a) Before any Contract is to be terminated or suspended; or
  - (b) In the event of a claim for payment not clearly within the terms and conditions of Contract.

## **26. Corporate Contracts Register**

- 26.1 The Corporate Contracts Register is held within the approved portal and all quotations and tenders conducted must be created into a Contract. It is the responsibility of each Directorate to create and maintain their own Contracts within the portal.
- 26.2 It is the responsibility of each Directorate to update the register following a quotation or tender process within the approved portal.
- 26.3 Any officer that requires training must contact the corporate procurement unit.

## **27. Review and Amendment of Contract Procedure Rules**

- 27.1 The Corporate Procurement Manager shall continually review these Contract Procedure Rules and shall undertake a formal review at least every three years.
- 27.2 With the exception of Rule 23.1 the Monitoring Officer shall have authority to make alterations of a minor nature or such as are required to be enacted immediately to ensure compliance with statutory obligations. Any minor changes will be reported to the next meeting of the Council.