

Part 8

PROCUREMENT GUIDANCE

PART A – Introduction

- 1 This Procurement Guide is for the guidance of officers dealing with procurement.
- 2 This Procurement Guide must be read in conjunction with the Council's Contract Procedure Rules ("CPR"), the Procurement Strategy and the Finance Procedure Rules.
- 3 The Council must comply with the Public Contracts Regulations 2006 in respect of all contracts to which those Regulations apply.
- 4 The definitions and interpretations contained in the Contract Procedure Rules shall also apply to this Procurement Guidance.
- 5 The officer dealing with contract must obtain a specified number of quotations or invite a specified number of tenders according to the Contract Value in accordance with the following table:

Total Contract Value	Minimum number of quotations to be obtained/tenders to be invited
£10,000 or under	1 quotation
Over £10,000 to £50,000	3 quotations
over £50,000 to £75,000	4 quotations
over £75,000	Check with Legal Services

PART B - Procedures for obtaining quotations (Contract Value over £10,000 to £75,000)

- 6 If a contract has an estimated Contract Value of at least £10,000 but no more than £75,000 then a competition exercise must be carried out, see CPR Rules.
- 7 Provided that there is a financial budget for the contract which has been approved by Cabinet, a Head of Service may carry out a competition exercise by requesting quotations, in accordance with the Contract Procedure Rules.
- 8 The officer letting the contract must follow the following process:
 - 8.1 Write a specification for the job setting out the details of the goods or the service to be procured. This should preclude arguments at a future stage about what was required.
 - 8.2 ensure that there is a budget for the procurement.
 - 8.3 Check if there is a Select List or Framework Contract in existence (if there is you have to use it).
 - 8.4 Instruct Legal Services (enclosing a copy of the Specification and the Authority to request quotations).
 - 8.5 Establish the evaluation criteria, see Part D of this Guide. This must be done prior to inviting quotations and should be disclosed to persons who wish to submit a quotation.
 - 8.6 Set a deadline for the return of quotations (e.g. "13.00 on Wednesday 22 January 2007"), and state where and how the quotation should be returned.
 - 8.7 Quotations by fax, phone or e-mail are not acceptable for contracts with a contract value over £10,000.
 - 8.8 At the opening, details of all quotations received (name of person submitting the quote, value and any other relevant information) should be recorded, the record signed and dated by those present.

- 8.9 Any quotations received after the deadline for receipt may be opened and returned to the sender with an explanation that their quotation could not be considered because it was received after the deadline. The Monitoring Officer, Section 151 Officer or the Internal Audit Manager may accept quotations received within 24 hours of the deadline if it is reasonable in all the circumstances.
 - 8.10 Check that all bids are compliant and that no one has attempted to deviate from your documents.
 - 8.11 Evaluate the compliant quotations, see Part D of this Guide.
 - 8.12 Identify the successful bidder.
 - 8.13 The relevant Head of Service may accept a quotation provided that the amount is no greater than the sum approved in the approved budget. If the relevant Head of Service cannot accept the quotation because the amount of the quotation exceeds the sum authorised the Head of Service should refer the matter to the Section 151 Officer who will give advise as to how to progress the matter.
 - 8.14 Notify the successful and unsuccessful bidders in writing of the outcome of the competition exercise and complete the contract with the successful bidder.
 - 8.15 Register the contract in the Contracts Register and give the original contract to Legal Services.
 - 8.16 Keep all the papers relevant to the contract in accordance with the Record Retention Policy.
- 9 The officer letting the contract should work closely with Legal Services.

PART C - Tendering Procedures (Contract Values over £75,000)

- 10 There are effectively five stages to the procurement process:
- 10.1 Preparation
 - 10.2 Invitation of tenders
 - 10.3 Evaluation of tenders
 - 10.4 Acceptance and award
 - 10.5 Monitoring performance
- 11 Preparation**
- 11.1 The procurement must be properly planned and the contract must offer value for money.
 - 11.2 Provided that there is a financial budget for the contract which has been approved by Cabinet, a Head of Service may carry out a procurement exercise by requesting tenders, in accordance with the Contract Procedure Rules.
 - 11.3 Before proceeding with a procurement of goods or services, the officer letting the contract must consult with Legal Services. This is to ensure that you can be made aware of any arrangements already in existence which you could or must use, and also that the Council complies with the EU rules on procurement.
 - 11.4 Generally the procedure will be similar to that for inviting quotations. Before proceeding with any procurement the officer in charge of letting the contract must consider the following:
 - 11.4.1 Policy and Funding Approvals
The officer letting the contract must ensure there is a budget approved by Cabinet for that contract.

11.4.2 European Union (EU) Procurement Directives

If it is estimated that the Contract Value will exceed £100,000 the EU Regulations may apply and the matter must be referred to Legal Services. If the EU Regulations apply Legal Services will guide you through the process.

11.4.3 Contract Documentation

- (i) Specification
The Contract Specification is the most important document in the procurement process. The benefits are threefold. First, you have clearly documented what you are seeking from the procurement exercise. Secondly, it ensures that tenderers are all bidding on the same basis, encouraging accurate bids. Finally it should obviate the need for costly variations or preclude the submission of contractual claims, and will be easier to monitor.
- (ii) A Specification should include:
 - the task(s) required, volume and frequency;
 - the level of input, time and resources required or the outputs required;
 - the facilities on-site and access to them;
 - the standards of performance expected;
 - the length of any contract and any other details not included elsewhere;
 - quality of material;
 - relevant Council policies.
- (iii) The EU rules with regard to Specifications must always be followed, and these are set out in the EU Codes of Practice. You should particularly avoid 'naming' products, suppliers or manufacturers as well as specifying provisions that could be classed as discriminatory (for example, ordinarily you cannot state that a product should comply only with a British Standard). You should always use the words "or EU equivalent".

11.4.4 Other Contract Documents

The Council's standard documentation (as supplied by the Legal Services Manager/Monitoring Officer) must be used in the tendering procedure unless the Legal Services Manager/Monitoring Officer otherwise agrees. The documentation will include:

- (i) a pre-contract questionnaire (if required)
- (ii) a contract or contract conditions
- (iii) an invitation to tender including the tender evaluation criteria
- (iv) a collusive tendering certificate
- (v) a canvassing certificate
- (vi) the draft tender
- (vii) a breakdown of the goods or service to enable the tenderers to provide a breakdown of costs
- (viii) other documentation as may be necessary

12 Invitation to Tender

12.1 There are four tendering procedures:

- 12.1.1 Open
- 12.1.2 Restricted
- 12.1.3 Negotiated
- 12.1.4 Competitive Dialogue

12.2 The Council shall use either the Open Procedure or the Restricted Procedure unless the Legal Services Manager/Monitoring Officer permits the use of an alternative procedure.

13 Open Tendering

13.1 The Open Tendering Procedure is a procedure leading to the award of a contract whereby all interested persons may tender for the contract. It shall apply when the Legal Services Manager /Monitoring Officer considers it is appropriate that no steps be taken to limit the number of tenders received nor to consider the suitability of interested persons prior to the submission of tenders.

13.2 For the purpose of this Procedure:

- 13.2.1 If the total value of the contract exceeds the appropriate EU threshold, a public notice must be given in the OJEU.
- 13.2.2 a public notice must be given for not less than 14 days on the Council's website and in one or more local newspaper or journal circulating among persons who carry out work or provide supplies or render services of the kind concerned.
- 13.2.3 The public notice will detail the nature and purpose of the contract, invite tenders and state a reasonable deadline for the return of tenders i.e. the latest date and time for receipt by the Council (in considering what a reasonable period might be, regard should be had to the timing stated in the Public Contracts Regulations 2006).

14 Restricted Tendering

14.1 The Restricted Tendering Procedure is a procedure leading to an award of a contract whereby only persons selected by the Council may submit tenders for the contract. It shall apply when the Legal Services Manager/Monitoring Officer considers it is desirable to examine the suitability of suppliers and service providers before any such are invited to submit a tender.

14.2 For the purpose of this Procedure:

- 14.2.1 If the total value of the contract exceeds the appropriate EU threshold, a public notice must be given in the OJEU.
- 14.2.2 public notice must be given for not less than 14 days on the Council's website and in one or more local newspaper or journal circulating among persons who carry out work or provide supplies or render services of the kind concerned.
- 14.2.3 The public notice will detail the nature and purpose of the contract, invite expressions of interest and state a reasonable deadline for the return of pre-qualification questionnaire i.e. the latest date and time for receipt by the Council (in considering what a reasonable period might be, regard should be had to the timing stated in the Public Contracts Regulations 2006).
- 14.2.4 On receipt of an expression of interest the officer letting the contract will send a pre-qualification questionnaire to the interested person.

- 14.2.5 The pre-qualification questionnaire shall request, inter alia, details of economic and financial standing and technical or professional ability of the interested person.
- 14.2.6 Following the deadline stated in the notice the Council shall, in respect of each person/applicant who returned a pre-qualification questionnaire, carry out:
- (i) Financial checks (this shall be the responsibility of the Section 151 Officer after referral by the officer letting the contract); and
 - (ii) Technical checks including Health and Safety Policy checks (this shall be the responsibility of the department letting the contract).
- 14.2.7 Checks for criminal convictions.
- 14.2.8 Applicants who fail to meet acceptable criteria in these checks will be excluded from the final tender list.
- 14.2.9 A final tender list comprising at least the relevant number of contractors shown in the Contract Procedure Rules shall be invited to tender for the Contract.
- 14.2.10 The officer dealing with the contract will invite tenders from the final tender list, state a reasonable deadline for the return of tenders i.e. the latest date and time for receipt by the Council and state the criteria for the award of the contract.

15 Negotiated Tendering

- 15.1 The Negotiated Tendering Procedure is a procedure leading to an award of a contract whereby the Council negotiates the terms of the contract with one or more persons selected by it. This procedure will only be used in exceptional circumstances and then only with the prior written advice and authority of the Legal Services Manager/Monitoring Officer. The Legal Services Manager/Monitoring Officer may grant authority for the use of the Negotiated Procedure where:
- 15.1.1 the Council has used the Open Procedure, the Restricted Procedure or the Competitive Dialogue Procedure but the procedure was discontinued because of irregular or unacceptable tenders provided that the original terms of the proposed contract offered in the discontinued procedure have not been substantially altered;
 - 15.1.2 exceptionally, when the nature of the work to be carried out, the goods to be acquired or the services to be provided under the contract are such as not to permit overall pricing; or
 - 15.1.3 where the nature of the service to be provided is such that specifications cannot be established with sufficient precision to permit the award of the contract using the Open Procedure or the Restricted Procedure.
- 15.2 For the purpose of this Procedure:
- 15.2.1 If the total value of the contract exceeds the appropriate EU threshold, a public notice must be given in the OJEU.
 - 15.2.2 a public notice will be given for not less than 14 days on the Council's website and in one or more local newspapers or journals circulating among persons who carry out work or provide supplies or render services of the kind concerned.

- 15.3 The public notice will detail the nature and purpose of the contract, invite requests to be selected to negotiate and state a reasonable deadline for the return of the pre-qualification questionnaire i.e. the latest date and time for receipt by the Council (in considering what a reasonable period might be, regard should be given had to the timing stated in the Public Contracts Regulations 2006).
- 15.4 On receipt of an expression of interest the officer letting the contract will send a pre-qualification questionnaire to the interested person.
- 15.5 The pre-qualification questionnaire shall request, inter alia, details of economic and financial standing and technical or professional ability of the interested person.
- 15.6 Following the deadline stated in the notice the Council shall, in respect of each person/applicant who returned a pre-qualification questionnaire, carry out:
- 15.6.1 Financial checks (this shall be the responsibility of the Section 151 Officer after referral by the officer letting the contract).
- 15.6.2 Technical checks including Health and Safety Policy checks (this shall be the responsibility of the department letting the contract)
- 15.6.3 Checks for criminal convictions.
- 15.7 Applicants who fail to meet acceptable criteria in these checks will not be invited to negotiate the contract or be put on the final tender list.
- 15.8 The officer dealing with the contract will invite tenders in writing from each person on the final tender list, state a reasonable deadline for the return of replies and the criteria for the award of the contract.
- 16 Competitive Dialogue
- 16.1 The Competitive Dialogue Procedure is a procedure in which any person interested in the contract to be awarded may request to participate and where the Council conducts a dialogue with persons admitted to that procedure with the aim of developing one or more suitable alternative solutions capable of meeting its requirements and on the basis of which the persons chosen by the Council are invited to tender.
- 16.2 The Competitive Dialogue Procedure is relevant to the award of a particularly complex contract where the use of the Open Procedure or the Restricted Procedure will not allow the award of that contract.
- 16.3 For the purpose of this Procedure:
- 16.3.1 If the total value of the contract exceeds the appropriate EU threshold, a public notice must be given in the OJEU.
- 16.3.2 a public notice must be given for not less than 14 days on the Council's website (and on the Electronic Tendering System if any such exists) and in one or more local newspapers or journals circulating in the among persons who carry out work or provide supplies or render services of the kind concerned.
- 16.4 The public notice will specify the Council's needs and requirements in relation to the contract, invite requests to be selected to participate and state a reasonable deadline for the return of the pre-qualification questionnaire i.e. the latest date and time for receipt by the Council.
- 16.5 On receipt of an expression of interest the officer letting the contract will send a pre-qualification questionnaire to the interested person.
- 16.6 The pre-qualification questionnaire shall request, inter alia, details of economic and financial standing and technical or professional ability of the interested person.

- 16.7 Following the deadline stated in the notice the Council shall, in respect of each person/applicant who returned a pre-qualification questionnaire, carry out:
- 16.7.1 Financial checks (this shall be the responsibility of the Section 151 Officer after referral by the officer letting the contract)
 - 16.7.2 Technical checks including Health and Safety Policy checks (this shall be the responsibility of the department letting the contract)
 - 16.7.3 Checks for criminal convictions
- 16.8 Applicants who fail to meet acceptable criteria in these checks will not be invited to negotiate the contract or be put on the final list.
- 16.9 The officer dealing with the contract will invite participation in the dialogue in writing from each person on the final list, state the date of commencement of the competitive dialogue and the criteria for the award of the contract.
- 16.10 During the competitive dialogue the Council:
- 16.10.1 May discuss all aspects of the contract with the selected participants;
 - 16.10.2 Shall ensure equality of treatment among all participants and in particular shall not provide information in a discriminatory manner which may give some participants an advantage over others; and
 - 16.10.3 Shall not reveal to the other participants solutions proposed or any confidential information communicated by a participant without that participant's agreement.
- 16.11 The Council may provide for the competitive dialogue procedure to take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying award criteria in the contract notice or descriptive document. Where such stages are used the Council must ensure the number of persons invited to participate in the final stage must be sufficient to ensure genuine competition to the extent there are sufficient number of persons to do so.
- 16.12 The Council may continue this Procedure until it can identify one or more solutions capable of meeting its needs. At that stage the Council shall declare the dialogue concluded and shall:
- 16.12.1 Inform the participants;
 - 16.12.2 Request each participant to submit a final tender containing all the elements required and necessary for the performance of the project on the basis of any solution presented and specified during the dialogue; and
 - 16.12.3 Specify in the invitation the final date for the receipt by it of tenders.
 - 16.12.4 The Council may specify that payments may be made to a participant in respect of the participant's expenses incurred in participating in the competitive dialogue procedure.

17 Receipt of tenders

- 17.1 Receipt and Custody of Tenders
- 17.1.1 Where tenders are invited, an individual tender received shall not be considered unless it is:
- (i) the same company, firm, partnership or individual originally invited to tender.

- (ii) contained in a plain envelope which is securely sealed and bears the word 'Tender' followed by the subject to which the tender relates.
- (iii) free from any distinguishing mark or matter which identifies the sender except in the circumstances described in paragraph 10.1.4 below.
- (iv) is addressed impersonally to the Legal Services Manager/Monitoring Officer where a tender is delivered by a Special Delivery Service and it identifies the sender's name on the delivery envelope, the tender shall not be disqualified if opened on receipt by the Legal Services Manager/Monitoring Officer provided that the contents comply in all other respects with this Procedure Rules.

17.1.2 Where a tender has been disqualified as a result of failing to comply with the above criteria, the tenderer shall be notified in writing of the reasons for the disqualification.

17.1.3 Tenders received shall be retained by the Legal Services Manager/Monitoring Officer until the time appointed for their opening.

17.1.4 A record of all tenders shall be maintained by the Legal Services Manager/Monitoring Officer.

17.2 Opening Tenders

17.2.1 Where tenders have been invited, they shall be opened as soon as possible after the last date and time specified for their receipt.

17.2.2 Unless otherwise determined by the Cabinet, they shall be opened in one session in the presence of the relevant Portfolio Holder or one other member of the Cabinet, the Legal Services Manager/Monitoring Officer, or an officer designated by him or her, and the Chief Officer concerned or an officer designated by him or her.

17.3 Late Tenders

17.4 No tender shall be considered if received later than the time stipulated in the advertisement or other invitation. The tender may be opened to ascertain the name of the tenderer. In such instances the tenderer will be informed that his tender has been disregarded (unless the Legal Services Manager/Monitoring Officer is satisfied that there is evidence of posting in time for delivery by the due date and time in the normal course of post delivery AND the other tenders have not been opened).

17.5 Alterations to Tenders

17.5.1 The procedure to be adopted in the event of errors being found in the computation of tenders shall be referred to in the formal invitation to tender.

17.5.2 All tenders shall be examined by, or on behalf of, the Section 151 Officer concerned to detect errors in their computation.

17.5.3 Where such errors have occurred they shall be dealt with in accordance with the following procedure:

- (i) The tenderer shall be provided with details of errors in computation or other errors and be given the opportunity of confirming or amending his or her tender;

- (ii) If the tenderer amends his tender, details of the amendment must be supplied to the Council forthwith;
- (iii) If the tenderer confirms his or her tender, an endorsement should be added to the priced bill(s) indicating that all rates or prices (excluding preliminary items, contingencies, prime cost and provisional sums) inserted therein by the tenderer are to be considered as reduced or increased in the same proportion as the corrected total of priced items exceeds or falls short of such items. This endorsement should be signed by both parties to the contract.

18 Evaluation of Tenders

- 18.1 Tender evaluation is the process by which the Council scrutinises the competing bids put forward by those tenderers selected to tender.
- 18.2 The officer letting the contract must seek assistance from the finance department in evaluating financial criteria.
- 18.3 In assessing the tenders the Council must use the evaluation criteria contained in the invitation to tender/contract notice.

19 Acceptance and award

- 19.1 The relevant Head of Service may accept a tender provided that:
 - 19.1.1 the amount is no greater than the sum approved in the approved budget; and
 - 19.1.2 he or she has been given authority by the Section 151 Officer (see the Authorised Signatory List) to sign contracts with a Contract Value equivalent to the Contract Value of the contract being let.
- 19.2 If the relevant Head of Service cannot accept the quotation because the amount of the quotation exceeds the sum authorised in the approved budget, the Head of Service should either refer the matter to the Section 151 Officer who will give advise as to how to progress the matter, obtain the appropriate cabinet authority or, where relevant, a non-key decision to accept a specific tender at the specified tender price.
- 19.3 If the relevant Head of Service cannot accept the quotation because the Contact Value will exceed the limit for which he is authorised to sign, the rules contained in the Contract Procedure Rules should be followed.
- 19.4 The Council shall award the contract on the basis of the criteria set out in the Contract Procedure Rules and the tender documents.
- 19.5 The successful tenderer or person who has submitted a quotation shall be notified.
- 19.6 The unsuccessful tenderers or person who has submitted a quotation shall be notified.
- 19.7 Contracts which are subject to a standstill period shall give the unsuccessful tenderers 10 days to request more information regarding the Council's decision e.g. why their tender was unsuccessful and what points were lacking. This encourages tenderers to improve and increase their chances for success in the future.

20 Monitoring performance

The performance of contractors/consultants will be monitored by the relevant Director.

21 Retention of papers

All the papers relevant to the contract must be kept in accordance with the Record Retention Policy.

PART D – Miscellaneous**22 Framework Agreements (Call off Contracts)**

- 22.1 A Framework Agreement is an agreement or other arrangement between one or more Councils and one or more persons which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the person will enter into one or more contracts with the Council in the period during which the framework agreement applies.
- 22.2 When the Council wishes to conclude a framework agreement it shall follow either the open procedure or the restricted procedure.
- 22.3 One or more successful tenderers may be a party to the framework agreement. All successful tenderers who sign the framework agreement shall be placed on a select list.
- 22.4 The select list shall:
- 22.4.1 be compiled and maintained by the Section 151 Officer concerned;
 - 22.4.2 contain the names of all persons who have met the evaluation criteria;
 - 22.4.3 indicate whether a person whose name is included in it is approved for contracts for all, or only some of the specified values or amounts or categories; and
 - 22.4.4 be amended by suspending the contractor from the list for a length of time to be decided by the Section 151 Officer where the Contractor is temporarily unable to meet the terms of his contract; or
 - 22.4.5 be amended by deleting the contractor's name from the list where a contractor, in the opinion of the Section 151 Officer, is unsatisfactory or cannot meet the terms of his contract.
- 22.5 the Section 151 Officer shall make a report to the Cabinet (or relevant Portfolio Holder if the decision is a non-key decision) advising the contractors on the select list and of any changes thereto.
- 22.6 The Council may place an Order (creating a specific contract based on the framework agreement) with a person on the select list.
- 22.7 Where an order for goods or services is made by the Council for a specific contract pursuant to the Framework Agreement then:
- 22.7.1 The terms and conditions of the specific contract shall be substantially the same as those contained in the Framework Agreement.
 - 22.7.2 If it is necessary to alter the terms or specification in the Framework Agreement for a specific contract, the Council may re-open competition between all of those of the suppliers or service providers on the select list that are capable of performing the specific contract and the Council shall:
 - (i) Invite such suppliers or service providers to submit within a specified time limit either a quotation or a tender (depending on the value of the contract) in writing for the specific contract to be awarded;
 - (ii) Keep each quotation or tender confidential until the expiry of the said time limit; and

- (iii) Award the specific contract to the supplier or service provider who has submitted the best quotation or tender on the basis of the award criteria specified in the Framework Agreement.

Note: terms may not be substantially altered as this may place the Council in breach of EU Public Procurement Regulations. However special terms may be used to clarify ambiguity and such like. The specification for each contract will necessarily be different. Each Order must contain any special terms and the specification for that contract.

- 22.8 If the contract falls within the EU public procurement regime then the Select List may not be used.

23 Note on evaluation criteria

- 23.1 Regulation 30 of the Public Contracts Regulations 2006 sets out criteria for the award of a public contract. It is good practice to consider these criteria for all procurements, whether or not the EU Regulations apply to the particular procurement.
- 23.2 Contracts with a contract value of £75,000 or under and where payment is made by the Council, the Council shall accept the quotation or tender which offers the lowest price (or where payment is made to the Council, the highest price) UNLESS the Section 151 Officer determines otherwise.
- 23.3 Contracts with a contract value over £75,000 the Council shall accept the most economically advantageous for the Council taking into account whole life costs.
- 23.4 In deciding that an offer is the most economically advantageous the Council shall consider criteria linked to the subject matter of the contract including:
 - 23.4.1 Quality
 - 23.4.2 Price
 - 23.4.3 Technical merit
 - 23.4.4 Aesthetic and functional characteristics
 - 23.4.5 Environmental characteristics
 - 23.4.6 Running costs
 - 23.4.7 Cost effectiveness
 - 23.4.8 After sales service
 - 23.4.9 Technical assistance
 - 23.4.10 Delivery date and delivery period
 - 23.4.11 Period of completion
- 23.5 The Council must state the weighting given to each of the chosen criteria or, where this is not possible, list the criteria in descending order.
- 23.6 Financial factors may include:
 - 23.6.1 Price
 - 23.6.2 financial stability of the tenderer
 - 23.6.3 financial guarantees
- 23.7 Non-financial factors may include:
 - 23.7.1 compliance with conditions of tender
 - 23.7.2 technical suitability
 - 23.7.3 ability to provide the goods or service
 - 23.7.4 guarantees
 - 23.7.5 health and safety

- 23.7.6 quality assurance
- 23.7.7 compliance with Council policies
- 23.7.8 race relations
- 23.7.9 disability discrimination
- 23.7.10 equality issues
- 23.7.11 human rights
- 23.7.12 environmental issues
- 23.7.13 site inspection
- 23.7.14 interviews and presentations

24 E-procurement

The Council is currently looking into e-procurement.

25 Information

If the officer letting the contract receives a request pursuant to the Freedom of Information Act 2000 or which may be affected by the Data Protection Act 1998 or rules relating to confidentiality, the officer should liaise with Legal Services when formulating a suitable reply.