

## **17 Contract Procedure Rules**

- 17.1 The Council has various contracts for the supply of goods and services, (details of which are available to view on the Councils intranet) which offer the degree of service required at a competitive cost and are monitored.

It is important to refer all requests for the provision of supplies and services to the appropriate section of the Council, details of which are available on the intranet.

The Council can provide further help and advice regarding existing contracts/suppliers or alternatively put you in touch with someone who can best advise on the identified need. This is a service provided by the Corporate Procurement Team and is available to purchase on a buy-back basis.

- 17.2 The purpose of these rules is to assist schools in obtaining best value and to avoid entering into unnecessary, or unsound contracts which can be very costly. It is not intended to limit schools in any way from exploring the market or taking advantage of good opportunities.

### **Compliance with Contract Procedure Rules**

- 17.3 The purchasing of goods, services and works must be undertaken in accordance with the Council's Contract Procedure Rules ("CPR's") and Financial Regulations. The Schools' Contract Procedure Rules have been amended to reflect the involvement of Headteacher and Governing Bodies in the contracting process.
- 17.4 Contracts for works, supplies or services entered into by the Council shall be made in compliance with the Council's Contract Procedure Rules and Financial Regulations.
- 17.5 Such contracts shall be in line with the school's strategic objectives, policies and Annual Procurement Plan.
- 17.6 Headteachers, Teachers, Officers and Governors are reminded of their responsibilities in relation to gifts and hospitality and must ensure that they comply with the obligations set out in the relevant Codes of Conduct and any guidance issued in that regard. An extract from the Council's financial procedure rules on gifts and hospitality is included in Appendix D
- 17.7 If any Governor, Teacher, or Officer has concern or evidence that suggests that either the Headteacher and/or Chair of Governors has acted in an inappropriate way in respect of these CPR's then the matter must be referred to a full meeting of the Governing Body.
- 17.8 The highest standards of probity are required of all Headteachers, Teachers, Officers and Governors involved in the procurement, award and management of contracts. Any deviation from Contract Procedure rules must be reported to the Headteacher and/or Chair of Governors.

- 17.9 Schools should not enter into any financial agreement with capital implications without the written approval of the Council or appropriate body.
- 17.10 Schools must not make arrangements for overdrafts, any other form of credit or deferred purchase.

### **External Controls**

- 17.11 Wherever legal requirements conflict with or provide additional requirements to these CPR's those requirements shall prevail.
- 17.12 Compliance with the EU Public Procurement Regulations governing works, supplies and services is mandatory.

### **Procurement Plan**

- 17.13 For each financial year, the school **must** publish a Procurement Plan setting out its current contracts and contracts to be procured over £10,000 for the forthcoming financial year including details as to how any devolved capital is to be allocated.

The value of a contract is the **aggregated** cost over the life of the contract – not the annual amount.

- 17.14 Contract values must be calculated in accordance with the EU Procurement Regulations (even when the Regulations are not applicable) for consistency. The school should make the best use of its purchasing power by aggregating purchases whenever possible. Supplies, services or works should not be split in an attempt to avoid Contract Procedure Rules and the Regulations.
- 17.15 The Headteacher shall keep a contracts register setting down details of the contracts awarded in the preceding twelve months including the basis on which those contracts were awarded, together with details of those contracts £10,000 and above to be awarded during the forthcoming financial year.
- 17.16 The school will identify the relevant Headteachers, Officers and Teachers responsible for carrying out the school's procurement by the type of services, supplies and works to be procured and by value. These authorised officers and their respective details shall be included as part of the Procurement Plan.

### **Pre-Procurement Procedure**

- 17.17 Before undertaking procurement the authorised officer must:

- (a) establish a business case for the procurement
- (b) consider all means of satisfying the need
- (c) check to see if there is an appropriate approved list or framework agreement in place that the school can make use of
- (d) choose a course of action that represents Best Value for Money for the School

- (e) consider sustainable issues
- (f) consult with all stakeholders
- (g) establish a written specification detailing the school's requirements
- (h) the Council operates an E-Tendering system and schools should consider the use of this system (further information and associated costs can be requested from the Corporate Procurement Team) to allow all aspects of the procurement exercise to be recorded in one place, from the initial business case, evaluation and award of contracts, and contract management and performance monitoring.

### Procedures for Procuring Contracts

17.18 Financial thresholds have been set for each of the procurement levels. These have been set to reflect a balance between financial prudence and the reduction of bureaucracy. The authorised officer, when preparing a procurement business case, must recommend the appropriate procurement level to match the estimated contract value. Regardless of value, a contract decision should demonstrate that Value For Money has been thoroughly considered during the selection process. A written record of all quotes should also be kept. Financial thresholds and their procurement levels are:

Procurement Level	Financial Threshold (£)	Procurement Requirement
Low Value Procurement	Up to £10,000	Corporate Contract or a minimum of two verbal quotes followed by written confirmation. In-house provider invited to quote.
	£10, 000 to £25,000	Corporate Contract or a minimum of two written quotes. In-house provider invited to quote.
Intermediate Value Procurement	£25,000 to £75,000	Corporate Contract or a minimum of three written quotes. In-house provider invited to quote.
High Value Procurement	Contracts between £75,000 and £172,514 for Goods and Services, or, £4,332,012m for Works	Formal Tender Process <b>UNLESS</b> an in-house provider, appropriate Corporate Contract, or available framework exists.
EU Procurement	Current EU thresholds:  Contracts over £172,514 for Goods and Services or £4.332,012m for Works	Full EU Open or Restricted Tender or competitive dialogue process <b>UNLESS</b> an in-house provider, appropriate Corporate Contract, or available framework exists.

### 17.19 Contracts under £10,000

Where the total estimated value or amount of a proposed Contract does not exceed £10,000 the authorised officer shall ensure that the best value in terms of economy, efficiency and effectiveness is obtained. At least two verbal quotations followed by written confirmation are recommended as a means of demonstrating good practice.

17.20 Contracts over £10,000 but below £25,000

Subject to 17.22 below where the total estimated value or amount of a Contract is over £10,000 but below £25,000, at least two written (faxed or e-mailed) quotations **must** be sought from contractors believed to be suitably experienced in the subject matter of the contract.

17.21 Contracts over £25,000 but below £75,000

Subject to 17.22 below where the total estimated value or amount of a contract is over £25,000 but below £75,000, at least three written quotations **must** be sought from contractors believed to be suitably experienced in the subject matter of the contract.

**Exceptions to the Contract Procedure Rules**

17.22. The requirements of 17.19, 17.20 and 17.21 above shall not apply to:-

- (a) Supplies or services which are proprietary and wherein the opinion of the Headteacher/authorised officer, no reasonably satisfactory alternative is available provided that the Headteacher/authorised officer notifies the Assistant Director of Finance and Performance in writing stating his/her reasons;
- (b) If, in the opinion of the Headteacher/authorised officer, having regard to the nature of the works, supplies or services or any special circumstances which apply it is not reasonably practicable to obtain tenders, provided that the Headteacher/authorised officer shall forthwith notify the Assistant Director of Finance and Performance in writing stating his/her reasons.
- (c) The works to be executed necessarily involve the use of a proprietary part or repair provided that the Headteacher/authorized officer shall forthwith notify the Assistant Director of Finance and Performance in writing stating his/her reasons.
- (d) Supplies or services obtained from or under Contracts which have been negotiated by a Central or Local Government purchasing organisation or by or on behalf of any consortium, association or similar body of which the Council is a member;

17.23 Contracts between £75,000 and £172,514

Formal procurement contracts for supplies and services with an anticipated annual value in excess of £75,000 must be authorised by the Assistant Director of Legal and Democratic Services and undergo a formal written tender process and can be used in any other case where the Governing Body so determine, tenders shall be invited in accordance with either 17.25, or 17.26.

Contracts for the supply of goods and services with an estimated value above £172,514 are subject to EU rules and advice must be sought from the Council.

17.24 Contracts between £75,000 and £4,332,012

Formal procurement contracts for works with an anticipated annual value in excess of £75,000 must be authorised by the Assistant Director of Legal and

Democratic Services and undergo a formal written tender process and can be used in any other case where the Governing Body so determine, tenders shall be invited in accordance with either 17.25, or 17.26

Contracts for the supply of goods and services with an estimated value above £4,332,012 are subject to EU rules and advice must be sought from the Council

### **Restricted Tender Procedure**

17.25 This procedure shall have effect where invitation to tender for a Contract is to be limited to persons who reply to a public notice.

As a minimum, the tender should be advertised in two places:

- a) Public notice shall be given in one or more local newspapers circulating in the district and in one or more newspapers or journals circulating among such persons as undertake such Contracts.
- b) Contractsfinder website – <http://www.contractsfinder.businesslink.gov.uk>
- C) Via the E-tendering system (for participating schools)

The public notice shall set out particulars of the proposed Contract and invite persons interested to apply for inclusion on the select list.

After the expiration of the period specified in the public notice invitations to tender shall be sent to those persons who applied to tender and who have been selected. Suppliers must be selected on the basis of the published pre-qualification criteria.

A minimum of 3 suppliers should be invited to tender (unless it is an OJEU tender – then a minimum of 5 suppliers should be invited).

### **Open Tender Procedure**

17.26 This procedure shall have effect where a proposed Contract is to be let by open tender.

As a minimum, the tender should be advertised in two places:

- a) Public notice shall be given in one or more local newspapers circulating in the district and in one or more newspapers or journals circulating among such persons as undertake such Contracts.
- b) Contractsfinder website – <http://www.contractsfinder.businesslink.gov.uk>
- C) Via the E-tendering system (for participating schools)

The public notice shall set out the nature and purpose of the proposed Contract; invite tenders and state the last date and time when tenders will be received.

### **Selection of Procedure**

17.27 Unless either the law requires a particular procedure to be used, or the Governing Body approves the use of a particular procedure, the following shall apply: -

- (a) Where it is considered that reasonable competition will be provided by restricted tender, the procedure under 17.25 shall be used;
- (b) Where it is considered inappropriate to use the restricted tender procedure, the procedure under 17.26 shall be used.

### **Pre-Qualification Questionnaire (PQQ)**

17.28 The PQQ process is used to ascertain an applicant's suitability for inclusion on either an approved list or on a select list of tenderers and includes evaluation of the applicant's:

- (a) Financial position
- (b) Professional, technical and managerial ability
- (c) References and track record
- (d) Health and safety policy and arrangements
- (e) Equal opportunities and environmental policies.
- (f) Adequate insurance cover

### **The Invitation to tender (ITT)**

17.29 The ITT must include details of the school's requirements for any particular contract falling within the High Value Procurement category and includes:

- (a) A description of the services, supplies or works being procured
- (b) The procurement timetable including the tender return date and time, which shall allow a reasonable period for the applicants to prepare their tenders
- (c) A specification of the school's requirement and instructions on whether any variants are permissible
- (d) The school's terms and conditions of contract
- (e) The evaluation criteria including any sub-criteria and weightings as considered appropriate
- (f) Pricing mechanism and instructions for completion
- (g) A view upon whether TUPE will apply
- (h) Form and content of method statements to be provided
- (i) Rules for submitting of tenders
- (j) Any further information that will inform or assist tenderers in preparing tenders

### **Submission and Receipt of Tenders & Quotations**

17.30 Unless an E-tendering system is used, whereby tenders are submitted and received electronically, the following shall apply.

No tender will be considered unless received in a plain sealed envelope which shall bear the word "Tender" followed by the subject to which it relates, but shall not bear any name or mark intended to indicate the sender, and prospective tenderers shall be notified accordingly.

- 17.31 Envelopes shall be returned for the personal attention of the Headteacher. A record shall be kept of all envelopes received and the date and time of their receipt, which shall be signed by the receiving officer.
- 17.32 Headteachers shall arrange for tenders to be kept securely until the time appointed for their opening.
- 17.33 Any tender submitted in competition received after the specified time shall be returned promptly to the tenderer by the Head teacher who may, for this purpose, open the envelope to ascertain the name of the tenderer, but no details of the tender shall be disclosed.

### **Conditions of Tendering**

- 17.34 Each person submitting a tender shall be required to certify that he/she has not, before submission:
- (a) Communicated to any person other than his/her legal or other professional advisers the amount of any proposed tender;
  - (b) Adjusted the amount of any proposed tender for the work in accordance with any agreement or arrangement with any other person.

### **Opening of Tenders**

- 17.35 Unless an E-tendering system is used, whereby tenders are opened and recorded electronically, the following shall apply.

Tenders where the estimated amount or value exceeds £75,000 shall be opened and recorded at one time by the Headteacher and Chair of the Governing Body.

- 17.36 The Headteacher shall maintain a register of tenders received and shall record all details. The member of staff who takes custody of tenders after opening shall sign the register.

### **Errors and Discrepancies**

- 17.37 Without prejudice to the right of the Governing Body to refuse any tender, where the examination of a tender reveals any arithmetical omission, error or discrepancy in the figures the Governing Body may give to the tenderer whose tender is under consideration the opportunity to confirm their offer or to amend it to correct genuine errors.
- 17.38 Where the tenderer elects to amend their offer and the revised offer is no longer the lowest or most economically advantageous, the next tender should be considered.

### **Post Tender Negotiations**

- 17.39 Where procurement is conducted pursuant to the Regulations through either the open or restricted procedures, no post-tender negotiations are allowed. The authorised officer may seek clarification from suppliers where appropriate but negotiations on price are not permitted.

17.40 At all times during the procurement processes, the school shall consider and implement the principles of non-discrimination, equal treatment and transparency.

### **Tender Evaluation**

17.41 Tenders subject to the Regulations shall be evaluated in accordance with the relevant Regulations and the evaluation criteria set out in the Invitation to Tender. All other tenders shall be evaluated in accordance with the evaluation criteria set out in the Invitation to Tender.

All contracts, except contracts where lowest price was predetermined to be the appropriate criteria, shall be awarded on the basis of the offer that represents Best Value for Money to the school. The evaluation criteria shall be predetermined and approved by the appropriate Headteacher and listed in the Invitation to Tender documentation, in order of importance. In addition, the criteria shall be strictly observed (and remain unchanged) at all times throughout the contract award procedure.

17.42 After a contract has been awarded, and the value exceeds the relevant EU threshold, then the “**Alcatel Standstill Period**” applies. This is a 10-day period that allows unsuccessful suppliers to lodge an objection before the contract is concluded.

17.43 At all times during the procurement process, the school shall consider and implement the principles of non-discrimination, equal treatment and transparency.

17.44 To ensure transparency and to support freedom of information, all suppliers should receive feedback on their submissions and performance.

### **Acceptance of Tenders**

17.45 Where there is a tender process, a satisfactory tender that is the most economically advantageous may be accepted by the Headteacher who will report to the next available meeting of the Governing Body.

17.46 Where there is a tender process and the most satisfactory tender is not the most economically advantageous tender, the tender may be accepted by the Governing Body after consideration of a written report by the Headteacher.

17.47 The Governing Body reserves the right not to accept the lowest (or the highest if the school is to receive payment) or any tender.

### **Supervision of Contract**

17.48 It shall be a condition of the engagement of the services of any person (not being an officer of the Council) to supervise a Contract or matters relating to a Contract, that in relation to that Contract he/she shall:

- (a) Comply with these procedures as though he/she were an officer of the Council;
- (b) at any time during the carrying out of the Contract provide, on request, to the Headteacher, Assistant Director of Finance and Performance or other



- appropriate Chief Officer, all the records maintained by him/her in relation to the Contract; and
- (c) On completion of the Contract transmit all such records as the Headteacher or appropriate Chief Officer requires.

### **Form of Contract**

- 17.49 Every Contract which exceeds £10,000 in value requires written quotes; contracts which exceed £75,000 in value and in any other case where the Assistant Director of Legal & Democratic Services so decides, shall be under seal unless the Assistant Director of Legal & Democratic Services approves other arrangements.
- 17.50 Every Contract in writing shall specify:
- (a) The work, supplies or services to be done or supplied;
  - (b) The price to be paid with a statement of discounts or other deductions;
  - (c) The time or times within which the Contract is to be performed and, where appropriate, the amount of liquidated damages that may otherwise become due;
  - (d) The conditions of the Contract.
- 17.51 Every Contract in writing shall be signed by the Headteacher.
- 17.52 Every written Contract shall include a clause to prevent the Contractor from transferring or assigning directly or indirectly, the Contract without the written consent of the Governing Body, and to prevent sub-letting of the Contract except to the extent permitted in writing by the Supervising Officer or, if none, Headteacher.
- 17.53 Every written Contract shall include a clause to secure that the Governing Body shall be entitled to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation if, in connection with the Contract, the contractor commits an offence under the Prevention of Corruption Acts 1889 to 1916 or gives any fee or reward the receipt of which is an offence under section 117(2) of the 1972 Act, or has directly or indirectly canvassed any member or officer, or has obtained or attempted to obtain information concerning any other tender or otherwise acts in a similar unlawful manner.
- 17.54 Every written Contract shall include a clause to secure that, should the contractor fail to carry out the works, provide the services or deliver the supplies or any part thereof within the time specified in the Contract, the Governing Body, without prejudice to any other remedy available, shall be at liberty to terminate the Contract either wholly or to the extent of such default and execute the works, procure the services or purchase other supplies to make good such default or in the event of the Contract being wholly terminated the remainder of the works to be executed, services to be provided or the supplies remaining to be delivered. Such clause shall further secure that the amount by which the cost of so executing the works, so procuring the services or so purchasing other supplies exceeds the amount which would

have been payable to the contractor in respect of the works, services or supplies shall be recoverable from the contractor.

17.55 Every contract needs to comply with Employment, Equality and Health & Safety legislation.

17.56 Every contract needs to comply with CHAS (The Contractors Health and Safety Assessment Scheme).