



West Suffolk Council Contract Procedure Rules

March 2022

(Adopted by Council: 27 September 2022)

Introduction

- 1.1 These Contract Procedure Rules (Contract Procedure Rules) have been issued in accordance with Section 135 of the 1972 Local Government Act and the Public Contract Regulations 2015 (PCR2015) and adopted by West Suffolk Council to give consistency to procurement across the organisation.
- 1.2 Procurement is the process by which the Council manages the acquisition of all goods, services and works. It includes the identification of need, consideration of options and the actual procurement process.
- 1.3 The Procurement Policy lays out the strategic aims that West Suffolk is seeking to deliver through its procurement process. These Contract Procedure Rules must be read in conjunction with this policy in order to ensure that decisions are made in line with these aims.
- 1.4 These Contract Procedure Rules should be followed for all contracts unless they fall under the exclusion list in section 11 or are subject to an exemption. The circumstances where an exemption may be granted are listed in section 10.
- 1.5 The disposal of assets and the acquisition, use and disposal of Land and Buildings are not covered by these Contract Procedure Rules and are to be considered alongside the Financial Procedure Rules.
- 1.6 For the purposes of these Contract Procedure Rules there is a requirement for all communication to be in writing except where otherwise specified. This shall be deemed to include electronic communication, use of e-procurement and fax transmissions or hard copy.

Procurement thresholds and key requirements

- 2.1 In order to provide the appropriate level of proportionality to the requirements for varying scale of contracts the table below lays out the financial thresholds and the process and requirements at each level.
- 2.2 The Sustainable Procurement Requirements at the carrying contract values differ between critical and non-critical service areas. For the purposes of sustainable procurement critical service areas are those that have the most significant environmental impact.
- 2.3 These critical service areas are:
- Construction projects
 - Vehicle fleet
 - Facilities
 - Utilities

All other service areas are designated as non-critical for the purposes of sustainable procurement.

Value of Contract	Award Procedure	Sustainable Procurement Requirements (non critical service areas)	Sustainable Procurement Requirements (critical service areas)
£0 - £20,000	Procure as required	Reference Sustainable Procurement Ask and consideration	Reference Sustainable Procurement Ask and consideration
£20,001 - £100,000	Formal quotation procedure	Reference Sustainable Procurement Ask and consideration	Reference Sustainable Procurement Ask and consideration
£100,001 – International Advertisement Threshold (~£190k Revenue, £4.3m Capital)	National tender procedure	Reference Sustainable Procurement Ask and consideration. Include Sustainable Procurement question within tender (min 10% weighting).	Include Sustainable Procurement question within tender (min 10% weighting). Provide evidence of: - <i>use of an environmental policy statement</i> - <i>Specific targets for, and evidence, of working towards net zero carbon emissions.</i>

Above IA Threshold	National tender procedure	Include Sustainable Procurement question within tender (min 10% weighting). Provide evidence of: - <i>use of an environmental policy statement</i> - <i>Specific targets for, and evidence, of working towards net zero carbon emissions.</i>	Include Sustainable Procurement question within tender (min 10% weighting). Provide evidence of: - <i>use of an environmental policy statement</i> - <i>Specific targets for, and evidence, of working towards net zero carbon emissions.</i>
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Award procedure

- 3.1 The award of a contract can either be through direct approach to the market with the proportional requirements as laid below or through use of a procurement framework agreement (see section 4). Use of a framework agreement will automatically meet the award procedure requirements.

Procure as required (£0-£20,000)

- 3.2 Where the estimated value of goods, works or services to be supplied is less than £20,000 there can be direct procurement without the need for specification, multiple quotations or defining award criteria. In these instance Officers need to be satisfied that the arrangements made secure the best available terms for the Council.

Formal quotation procedure (£20,001-£100,000)

- 3.3 The Request for a Formal Quotation shall be issued through the e-procurement portal utilising the standard template available in the Procurement Webpage and shall specify the supplies, services or works that are required together with the appropriate terms and conditions of contract as agreed with the Service Manager (Legal) and will state that no Formal Quotation will be considered unless it is received by the date, time and method stipulated.
- 3.4 All organisations invited to provide a Quotation must be issued with the same information at the same time and subject to the same conditions.
- 3.5 Three Formal Quotations shall be invited where the Officer is satisfied that competitive Quotations will be received from those three. If less than three quotations are received the process can be continued subject to Officer approval.
- 3.6 Providing clarification of a Request for a Quotation to a Bidder is permitted and is provided for within e-procurement.
- 3.7 For the receipt and opening of a Formal Quotation there must be strict compliance with the requirements of e-procurement.

Formal tender procedure (£100,001-International Advertisement threshold)

- 3.8 All procurement above £100,000 shall be conducted in accordance with advice from the Procurement Manager and shall be undertaken as an Open Tender Procedure using e-procurement system.

Open tender procedure

- 3.9 The Invitation to Tender shall be issued through the e-procurement portal and shall specify the supplies, services or works that are required together with the appropriate terms and conditions of contract as agreed with the Service Manager (Legal). It will also state that no Tender will be considered unless it is submitted via the e-procurement portal.
- 3.10 All organisations invited to provide a Tender must be issued with the same information at the same time and subject to the same conditions. All dialogue with Bidders during the process must be dealt with using the e-procurement portal.
- 3.11 Utilising the standard template available in the Procurement Webpage, all Invitations to Tender shall include a Form of Tender, and other documentation as advised by the Service Manager (Legal) or the Procurement Manager.
- 3.12 Providing clarification of an Invitation to Tender to Bidder is permitted and is provided for within e-procurement.
- 3.13 For the receipt and opening of a Tender there must be strict compliance with the requirements of e-procurement.
- 3.14 The Officer must ensure that there is approval from the Director for International Advertisement threshold procedure
- 3.15 All procurement above the International Advertisement threshold shall be conducted in accordance with advice from the Service Manager (Legal) and the Procurement Manager and shall be undertaken using e-procurement. Provisions, such as those relating to the receipt and opening of Tenders, must be followed exactly in accordance with the legislation.
- 3.16 All transactions exceeding the International Advertisement threshold must be conducted in accordance with the required procedures as set out in the PCR2015. Strict rules govern the process in relation to timescales, descriptions and selection procedures and these are in addition to these Contract Procedure Rules. Advice must be sought from the Procurement Manager and the Service Manager (Legal) in all circumstances where there is a likelihood of the PCR2015 limits being exceeded. Before awarding any contract above the tender threshold.

Framework agreements

- 4.1 A Framework Agreement may be entered into with one provider, or, where an agreement is concluded with several organisations, there must be at least three providers. Advice must be sought from the Procurement Manager when a Framework Agreement is being considered. Contracts based on Framework Agreements may be awarded by either:
- Direct Call Off - applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition, or
 - Mini Competition - where the terms laid down in the Framework Agreement are not precise enough or complete for the particular call-off, by holding a mini competition.

Specification setting

- 5.1 For procurement where a specification document is required the Officer must prepare a document that describes the Council's requirements in sufficient detail to enable the submission of competitive offers before starting a procurement process. The specification document must include performance targets and/or the criteria for acceptance and must be outcome or output based.
- 5.2 Consideration must also be given by the Officer to economic, environmental and social value benefits of any proposed procurement to include consulting stakeholders where appropriate. Further information is within the Procurement Policy or advice can be obtained from the Procurement Manager.
- 5.3 The Officer must define Award Criteria and any sub criteria that are appropriate to the procurement and designed to secure an outcome delivering the strategic procurement aims for the council. The basic criteria shall be:
- Lowest price (to ensure value for money)
 - Delivery of specification
 - Environmental impact (min 10% weighting). The West Suffolk Council Procurement policy can be used a reference for setting this criteria.
- 5.4 Award Criteria must not include:
- Matters which unfairly discriminate against suppliers
- 5.5 Good practice requires that quoted prices or tendered prices must not be altered without justification. However where there is a risk that a priced document maybe subject to computational errors then the Officer must decide, at the time that the specification is agreed,

how such errors will be treated and this should be detailed within the Specification. Further information is within the Procurement Webpage or advice can be obtained from either the Procurement Manager or the Service Manager (Legal).

Officer responsibilities

- 6.1 Officers responsible for procurement must comply with these Contract Procedure Rules, Financial Procedure Rules, the Officers' Code of Conduct, and with all UK binding legal requirements. Officers must ensure that any Agent, Consultants and contractual partners acting on the Councils' behalf also comply.
- 6.2 Before requesting Quotations or inviting Tenders the Officer must:
- Explore whether there is an alternative to buying the goods services or works.
 - Check with the Procurement Manager whether a relevant contract exists before seeking to enter into a further contract; if such a relevant contract exists, this must be used unless there is an auditable reason not to.
 - Check with the Procurement Manager whether a suitable Framework Agreement is available from any Contracting Authority or Professional Buying Organizations (e.g. ESPO, GPS, YPO, CBC etc.) before starting a new procurement; where a suitable Framework Agreement exists, consideration should be given to procure from it unless there is an auditable reason not to.
 - Confirm that there is member or delegated approval for the expenditure and the procurement complies with the approved policy and scheme of delegation as set out in the Constitution.
 - If a Tender relates to a contract award which is a Key Decision, confirm that all appropriate steps have been taken.
 - Seek timely procurement, legal, financial, and other professional advice.
 - Confirm that they are authorised to use the e-procurement portal or obtain authorisation from the Procurement Manager.
 - Have regard to the guidance in the Procurement Webpage and the Procurement Policy.
 - Give consideration to Contract Management and prepare a business case if the project is high risk, high profile or of significant financial value
 - Keep records of all Contracting Decisions taken.
- 6.3 The Officer must ensure that timely advice is sought from the Director - HR, Governance & Regulatory when any employee

either of the Councils or of a service provider may be affected by the Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE) issues before proceeding with inviting Tenders or Quotations.

Contract formalities

7.1 All contracts to which these Procedure Rules apply shall be in writing.

7.2 Advice from the Service Manager (Legal) and the Procurement Manager must be sought for the following contract types:

- Where the Total Value exceeds the International Advertisement thresholds
- Those involving leasing arrangements where it is proposed to use a supplier's own terms and conditions
- Agreements involving the development of land for public benefit
- Those that are complex in any other way.

7.3 All contracts shall clearly specify:

- What is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done)
- The provisions for payment (i.e. the price to be paid and when)
- Whether the price stated is inclusive or exclusive of Value Added Tax
- The time, or times, within which the contract is to be performed
- The provisions for the council to terminate the contract.

7.4 Guidance must be sought from the Service Manager (Legal) for the terms and conditions that will apply to any contract with a value in excess of £50,000.

7.5 Where a contract does not contain a defined extension period but supply of goods/services is desired to continue past the contract end date, then either:

- a re-tender for that contract must be performed in line with the Procurement thresholds in paragraph 2.3. or
- an exemption must be granted for a contract extension under the circumstance listed in paragraph 11.5

Advertisement of quotation or tender opportunities

8.1 Officers shall ensure that a sufficiently accessible advertisement is published to generate the appropriate level of interest in the contract. Examples of where such advertisements may be placed include:

- Suffolk Sourcing and Contracts Finder.
- Constructionline or similar specialist portal websites created for contract advertisements
- the Council's website
- the Council's social media accounts
- national official journals
- the Find a Tender public services platform.
- Any other appropriate mechanism in consultation with the Procurement Manager and Service Manager (Legal).

8.2 The Officer must ensure to give Bidders an adequate period in which to prepare and submit a Quotation or Tender consistent with the complexity of the contract requirement. Advice must be sought from the Procurement Manager but the following are recommended:

Quick Quotation 10 Calendar Days

Formal Quotation 28 Calendar Days

Formal Tender 28 Calendar Days

EU Tender The timescales are prescribed and vary according to procedure utilised.

8.3 No Quotation or Tender received after the date and time indicated in the Request for Quotation or Invitation to Tender shall be accepted or considered, other than exceptional circumstances and the Officer must consult with the Monitoring Officer and Procurement Manager.

Collaborative arrangements

9.1 In order to secure Value for Money, the Council may enter into collaborative procurement arrangements. The Officer must consult with the Procurement Manager in these circumstances.

9.2 All procurement made via a local authority procurement consortium or a Professional Buying Organisation (PBO) are deemed to comply with these Contract Procedure Rules and no exemption is required.

However, procurements above the PCR2015 limits must be let in accordance with those procedures, unless the consortium has satisfied this requirement already

- 9.3 Any contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the Contract Procedure Rules of the leading organisation, will be deemed to comply with these Contract Procedure Rules and no exemption is required. However, advice must be sought from the Procurement Manager.

Exclusions

- 10.1 These contract procedure rules apply to all contracts commissioned by the Council, except for:
- The making of grant payments which are covered by the Financial Procedure Rules, or
 - Contracts of employment which make an individual a direct employee of the council, or
 - The engagement of Counsel/Advocates or other experts by the Service Manager (Legal) where such engagement falls outside an existing framework for the provision of legal services, or
 - Contracts where delay will adversely impact on the service delivery of the Council and there is a prior specialised knowledge of a particular building or asset, or
 - Agreements regarding the acquisition, disposal, or transfer of land. Further guidance must be sought from the Service Manager (Legal) or the Procurement Manager; or
 - The lending and borrowing of money, or
 - The purchase or sale by auction or at public fairs and markets, or
 - The purchase of works of art or museum specimens, or
 - Agreements in relation to festivals and arts programming, or
 - Agreements under s.106 of the Town and Country Planning Act 1990 (as amended).

Exemptions

- 11.1 Exemptions to the procurement process cannot be awarded where the proposed value exceeds the International Advertisement threshold.

- 11.2 Below this threshold, exemptions must only be sought in exceptional circumstances and all exemptions, must be recorded.
- 11.3 Between £100,001 and the International Advertisement thresholds, any exemption must be approved by the relevant service Director in consultation with the Section 151 Officer, The section 151 Officer shall keep records of all exemptions granted along with reasons and supporting evidence for such exemptions.
- 11.4 Below £100,000 any exemption must be approved by the Director or an officer delegated to make such decisions by the Director. The Director, or delegated officer, must send a record of the exemption to the Section 151 Officer alongside supporting evidence and reasons.
- 11.5 Exemptions are likely only to be granted in the following circumstances:
- An unforeseeable emergency involving immediate risk to persons or property, or serious disruption to council services.
 - The goods or services are supplied at a fixed price or the prices are wholly controlled by trade organisations and the relevant Director is satisfied that no satisfactory alternative is available.
 - The works to be executed consist of repair or supply of parts of existing propriety machinery or plant.
 - The items to be supplied consist of goods or services which are currently in use and are required for the purposes of standardisation.
 - Best value is anticipated to be delivered from sourcing goods on the second-hand market where no competing quotations can be obtained.
 - The anticipated disruption/cost of changing supplier will significantly outweigh the savings generated from retendering.
 - The specialised nature of the goods, services to be supplied or the works to be executed means that only one suitable supplier has been identified or is available.
 - Emergency action is required and/or immediate repairs are required to buildings, structures and other assets damaged by fire, flood or vandalism.
 - Unforeseen works where delay will adversely impact on the service delivery for the Council.
 - For a 'pilot' scheme where goods and services are procured on an experimental basis and considered to be the most appropriate approach for a particular scenario and where 'pilot' scheme is for a clearly defined period not exceeding 24 months and where agreed by relevant Service Manager and the Procurement Manager.

- 11.6 If an exemption is sought which is not for any of the above reasons, advice must first be obtained from the Monitoring Officer and Section 151 Officer in order to determine whether such an exemption can be applied. Exemptions for reasons not listed above will be acceptable only in exceptional circumstances.

Records and safekeeping

- 12.1 It is essential that for every Procurement exercise a record is kept by the Officer. Where e-procurement has been used then the system retains the records from after the Request to Quote or Invitation to Tender has been issued up to the Contract Award.
- 12.2 For every awarded contract over £25,000 the details of the winning tender must be sent to the Procurement Manager in the prescribed format. This includes awards made following a call-off from a Framework Agreement and contracts that may not have been openly advertised or been granted an exemption. This list of awards will be published in accordance with government transparency requirements.
- 12.3 Where the Total Value does not exceed £50,000, the following records must be kept:
- Request to Quote and Quotations (including name of Bidder and price)
 - Any exemption and the reason for them
 - Any clarification question and the answer
 - Award Criteria if the award is most economically advantageous
 - Details of how the Quotations were stored before opening
 - When and how the Quotations were opened
 - Written records or communications with the successful Bidder or an electronic record if written record of the transaction would normally not be produced.
- 12.4 Where the Total Value exceeds £50,000 the Officer must record:
- The method for obtaining bids
 - Pre-tender market research
 - Any Contracting Decision and the reasons for it
 - Any exemption together with the reasons for it

- The Award Criteria in descending order of importance and any sub criteria
- The Invitation to Tender sent to and received from the Bidder
- Clarification and post-tender negotiation (to include minutes of meetings)
- The contract documents
- Post-contract evaluation and monitoring
- Communications with the Bidder and with the successful contractor throughout the period of the contract.

12.5 Records relating to procurement must be retained in accordance with the Council's Retention guidelines.

12.6 Details of all Renewable Contracts (regardless of value) are and shall be entered onto the contract management system with the following details:

- The title of the contract and reference number
- The parties to the contract
- The name of the service and contract manager primarily responsible for the contract
- The estimated total value of the contract or the estimated annual spend or budget
- The start date, end date, review dates and any date to which the contract may be extended
- The procurement method to include details of any Framework Agreement.

12.7 The original executed and completed copy of all contracts over the value of £50,000 shall be passed to the Service Manager (Legal) for safe-keeping.

12.8 Directors shall be responsible for the safekeeping of all other contracts falling within their designated functions.

Evaluation, award of contract, and debriefing bidders

13.1 Apart from the debriefing required or permitted by these Contract Procedure Rules, the confidentiality of Quotations, Tenders and the identity of Bidders must be preserved at all times and information about one Bidder's response must not be given to another Bidder.

13.2 Contracts must be evaluated and awarded in accordance with the Award Criteria. During this process, Officers shall ensure that submitted

prices are compared with any pre-process estimates and that any discrepancies are examined and resolved satisfactorily.

- 13.3 The arithmetic in compliant Quotations or Tenders must be checked. If computational errors are found in the lowest or most economically advantageous bid, then advice must be sought from the Service Manager (Legal) before they must be notified to the Bidder. Further the Request to Quote or Invitation to Tender must be reviewed to ascertain the procedure in these circumstances.
- 13.4 Officers may accept Quotations and Tenders received in respect of proposed contracts, provided that they have been sought and evaluated fully in accordance with these Contract Procedure Rules and they do not exceed the budget provision. Only the successful Bidder will be subject to the appropriate Financial Vetting.
- 13.5 Where the Total Value is above the International Advertisement thresholds the Officer must notify all Bidders simultaneously and as soon as possible of the intention to award the contract to the successful Bidder. The Officer must provide unsuccessful Bidders with a period of at least ten days in which to challenge the decision before the Officer awards the contract. If the decision is challenged by an unsuccessful Bidder, then the Officer shall not award the contract and shall immediately seek the advice of the Service Manager (Legal).
- 13.6 The Officer shall debrief in writing all those Bidders who submitted a Tender about the characteristics and relative advantages of the leading Tenderer. No information, other than the following, must be given without taking the advice of the Procurement Manager or the Service Manager (Legal):
- How the Award Criteria were applied
 - The prices or range of prices submitted, in either case not correlated to Bidders' names.
- 13.7 If a Bidder requests in writing the reasons for any Contracting Decision (to include those deselected in any pre-tender shortlisting process) the Officer must give the reasons in writing within 15 days of receipt of the request. Guidance must be sought from the Procurement Manager.

Post-tender negotiation

- 14.1 Post-tender negotiation means discussions with a Bidder, or a number of Bidders, and can be a useful tool in making improvements to Quotations or Tenders. It can ensure that the Council obtains true value for money by purchasing an acceptable finished product at a competitive but fair market price, within the time stipulated. It can also ensure that potential suppliers have no illusions or misunderstandings as to their exact obligations under the terms of any contract. Further Guidance is available within the Procurement Webpage.

- 14.2 Advice must be obtained from the Service Manager (Legal) prior to entering into any Post-Tender Negotiations. Where post tender negotiation results in a material change to the specification (or contract terms) the contract must not be awarded and must be re-tendered.
- 14.3 Negotiations must not take place unless the Formal Quotation or Tender specifically reserves the right to do so. Any negotiations will occur following the closing date for receipt of Quotations or Tenders but before award of the contract.