

(6) Contracts Procedure Rules

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Introduction

This Introduction is provided to aid the understanding of the Regulations that follow. It does not in itself constitute a Regulation although the information it contains should as far as is possible be taken into consideration in relation to any decision taken under the Regulations themselves, which follow.

1. Who is affected by these Regulations?

Any Chief Officer of the Council and any other person, who has responsibility for the procurement of goods, services (including contracts for consultancy) or works for or on behalf of the Council.

2. Legal Requirements

Section 135 of the Local Government Act 1972 requires every Local Authority to make formal procedures. The Act refers to the supply of 'goods or materials and the execution of works'. Although it does not specifically require formal procedures for service type contracts, clearly significant contracting is now concentrated on services or consultancy and therefore these Regulations have been designed to include those circumstances.

3. Focus of these Regulations

Section 135 of the 1972 Local Government Act does not set any particular format for Procurement Regulations nor does it prescribe the contents in any detail. In considering any specific set of circumstances, however, it is expected that at all times officers will have in mind the objective implicit within section 135 of the Act namely:

That contracting processes shall include provision for securing competition.

In connection with this:

Recently, when commissioning local authority services, much thought has been given to more innovative means of contracting, in particular, to the avoidance of adversarial relationships during the course of the contract. These are variously referred to as 'partnerships', 'partnering', 'partnership sourcing', etc. In drawing up the Regulations these new approaches are recognised but are viewed rather as a matter of contract style than a fundamental shift in the way contracts are themselves established. Therefore, the Regulations allow for the principles of partnership and partnering to be applied through the application of more flexible rules for contract management. Nevertheless, they require the establishment of those relationships in the first place to be conducted through a clear, transparent and fair process, which takes account of the required level of propriety and incorporates competition.

4. De Minimis

The Council's procedures must, however, also recognise the administrative cost involved and make provision for less exhaustive processes for low value contracts. These Regulations therefore set de minimis levels and describe the circumstances in which these will apply and the procedures to be followed.

5. Proprietary Products

The Regulations also recognise that some products and services may be unique and therefore are available from one source only and that in such circumstances competitive tendering may not always be appropriate. The procedures within these Regulations for the procurement of Proprietary Products set out the requirements in these situations.

6. The Framework of Rules

At the heart of these Regulations is a system of nominated officers, which is intended to ensure proper separation of duties, to identify the accountabilities and encourage the best use of skills and knowledge. The framework includes for each contract:

- a Chief Officer
- a Contracting Officer
- a Contract Manager

The duties for each of whom are each set out within the Regulations.

The processes are designed in incremental steps depending upon the value of the contract under consideration, clearly those which exceed current EU procurement thresholds are subject to the most rigorous of the processes. These processes and thresholds are fully described within these Regulations.

7. Contract Management

In addition to the processes by which contracts are established, there is a need to ensure that contracts are properly managed during their life. Therefore, these Regulations now cover aspects of Contract Management, which relate to ongoing contract variation, price control or termination of contracts at any time during the contract period. The Regulations also draw attention to Member involvement in contract monitoring.

8. Variation to Contracts

Contracts for services have, in many instances, adopted a partnership style. This often has the effect that longer periods of contract are awarded, this is particularly so where the Council's own staff have been transferred to the Contractor. The use of longer-term contracts does give rise to the likelihood of changes occurring in the legislative, business or local authority environment. These changes would have been unforeseen at the time that the contract was awarded. If such changes are so fundamental that the basis of the contract is undermined, this could lead to termination, there are circumstances where it would be perfectly reasonable to adjust contract terms through variation to allow the contract to continue in a mutually agreeable way. These Procurement Regulations give powers to Chief Officers (in consultation with the Financial Services Manager and the Solicitor to the Council) to agree variations beyond the original contract terms. Other variations within the terms of the contract are to be dealt with by the Contract Manager.

9. Council Emphasis

These Regulations aim, wherever possible, to place responsibility with the Chief Officer of a group. For this reason the Regulations require Chief Officers to set Council Rules and allow for these to reflect operational needs and ways of working, in particular for low value purchases (below £20,000 in total value). These rules prevent the need for excessive bureaucracy whilst still requiring best practice and high standards.

One significant purpose of these Regulations is to ensure transparency relating to decisions taken around the procurement and contracting process. These Regulations establish a Register as the primary source for recording contract details, responsibilities, actions and decisions.

Whilst supporting a group and service focus of responsibilities the Regulations also recognise a corporate need to gather information and share contracting expertise and wisdom across groups and with Members. The availability of information through the proper keeping of records is vital in allowing this to take place.

10. Future Developments

There is an accelerating use of electronic commerce and this will have an effect upon these Regulations as new systems are implemented. It is recognised that such changes to tendering processes may well mean further development of these Regulations. For the purpose of this publication however, it is assumed that if electronic means are to be used for any of the processes covered by Regulations then officers should seek advice from the Chief Auditor if they are proposing to carry out a competitive exercise by electronic means.

11. Reviewing the Regulations

Monetary limits will be reviewed annually; the full Regulations will be reviewed at least once every two years. The Finance Services Manager will carry out these reviews.

12. Guidance

Advice on 'best practice' in the area of contracting and contract management are set out within Guidelines that support the Good Practice Guidance. In order to ensure that officers have access to advice and guidance, a support system, including consultancy is available. If officers have doubt or difficulty in any given situation relating to contracts, they should use these. The Regulations detail these support arrangements.

13. Layout and Referencing

Each Regulation is numbered to the left of the text. In referring to Procurement Regulations or recording decisions taken under any Regulation reference numbers should be used for the purpose of clarity.

Definitions

The following definitions are set out in categories to aid understanding.

The terms and functions set out in these Definitions may be identified within the body of the document by the use of an initial capital letter

Corporate and Legal definitions

- a. **'Procurement Regulations'**, also referred to as **Regulations**, means Standing Orders for Contracts as required by the Local Government Act 1972 section 135 and includes contracts for services.
- b. **'Council'** means the Kennet District Council who is required to make these Regulations under the Local Government Act 1972 section 135.
- c. **'Committee'** means any Committee of the Council and includes a Sub-Committee or the full Council.
- d. **'Legislation'** includes subordinate legislation.
- e. **'Contract'** means the agreement between the Council and the Contractor comprising the conditions of contract, Specification and any defined schedules and all matters referred to in the invitation to Tender and the Contractor's response together with acceptance by the Council.
- f. **'Corporate Contract'** means any contract for Products in Common Use and applies particularly to contracts where exclusive use by the Council is a term of the Contract. Guidelines provide details of these contracts.
- g. **'Under Hand'** means under the signature of an authorised officer.
- h. **'Under Seal'** means under the common seal of the Council attested as required by the Council's Standing Orders.
- i. **'Partnering Agreement'** means an agreement between the Council and a Contractor that is intended to govern the way in which both parties work together in the management and delivery of the Contract. The basis of the agreement would normally imply a long-term relationship based on trust and on clear mutually agreed objectives. The Partnering Agreement is not a substitute or addendum to the formal Contract. It has no legal status.

Functions and Individuals identified within these Regulations

- j. **'Chief Officer'** means the Chief Executive, Director of Resources and Director of Community Services. In respect of Contracts for services for all telecommunications, major corporate information technology and Goods in Common Use the Chief Officer shall be the Director of Resources.

Personal duties that are assigned to a 'Chief Officer' in these Regulations shall be exclusive to these persons above.

Any Chief Officer may authorise a service manager or other principal officer in the same, or another, Group to act for them under these Regulations and 'Chief Officer' includes such officers except where expressly excluded. Such authorisation shall be in writing, shall include any limitations to the delegation, and shall be recorded in the sub-delegation register held by the Solicitor to the Council.

A Chief Officer may appoint the Information Services Manager (or other persons within Information Services agreed by him/her) to act as Contracting Officer and/or Contract Manager for the purpose of a particular Contract for goods or services.

- k. **'Contracting Officer'** means a person appointed by a Chief Officer for the purpose of carrying out the appropriate duties set out in these Regulations. A Contracting Officer may be appointed specifically for the purpose of a single contract or for a range of contract requirements but may not also be the Chief Officer for any contract for which he/she is the Contracting Officer.
- l. **'Contract Manager'** means a person appointed by a Chief Officer to manage the performance of a contract throughout its term. It shall be for the Chief Officer to decide whether, having regard to any need for the separation of duties, the Contract Manager may also be the Contracting Officer for the same contract. The duties of a Contract Manager shall begin when the contract is awarded and shall cease when it is completed or terminated.
- m. **'Solicitor to the Council', 'Finance Services Manager' and 'Information Services Manager'** includes Officers specifically authorised by them to act in that capacity.
- n. **'Tenderer'** means any person offering to sell or buy a Product. This term applies before a contract is formed and includes unsuccessful bidders.
- o. **'Contractor'** means any person contracted to sell or buy a Product. This term applies after a contract is formed.
- p. **'Tender Opening Officer'** means any person nominated by the Chief Officer to carry out tender opening procedures set out in **F** of these Regulations

Documents referred to in these Regulations

- q. **'Guidelines'** mean Guidelines on Good Commercial Practice issued, from time to time, by the Financial Services Manager and the Solicitor to the Council.
- r. **'Low Value Procurement Rules'** mean rules made by a Chief Officer under B of these Regulations which shall provide the detail of departmental processes and, in the case of purchases with an estimated total value below £20,000 shall, if determined by the Chief Officer, provide the competitive procedure for the group. Such rules shall also cover any arrangements when a contractor or other external persons are authorised to act on behalf of the Council in any matters connected with these Regulations.

- s. **'Council Register of Contracts'** hereafter known as Council Register means a register maintained by each group containing the details of every relevant contract in excess of the de minimis value set for low value contracts in Regulations C.5. Appendix 1 provides details of the entries required in the Departmental Register. This will be set up as electronic registers when appropriate.
- t. **'Approved List'** means a list of Tenderers, established in accordance with Sections 17 to 22 of the Local Government Act 1988, who have met the Council's predetermined criteria and who are willing and able to supply Products of a particular type or description.

Other General Terms

- u. **'Product'** includes any goods, equipment, material, works, service or benefit.
- v. **'Common Use'** means any Product purchased by the Council that is required for use by more than one Group/Service of the Council.
- w. **'Proprietary Product'** means a product which has unique characteristics which alone meet the required realistic performance specification and is either sold only at fixed rates or sold by more than one source but may be purchased from the prime source at clearly better terms. In the case of a contract for consultancy the services of a named person or firm may be regarded as a Proprietary Product.
- x. **'Specification'** means a clear statement of the Product in sufficient detail:
 - ♦ To enable the contractor to submit a competitive price
 - ♦ To ensure that a Product supplied will meet the requirements of the Council
 - ♦ To define the precise output required
- y. **'A Tender'** means an offer to sell or buy made by a Tenderer
- z. **'To Tender'** means to make an offer to sell or buy.

A. General provisions

Aims

These Procurement Regulations:

- A.1. ♦ Aim to achieve best value for the Council in the market by ensuring provision for securing competition at appropriate levels of expenditure whilst avoiding disproportionate or bureaucratic costs where levels of expenditure are less significant.
- ♦ Aim to achieve fullest accountability at all levels within the Council, whilst ensuring an adequate audit trail by requiring the appropriate officers to record who did what, how and when.
 - ♦ Aim to ensure that officers follow proper and fair procedures for the involvement and selection of Contractors.
 - ♦ Aim to ensure that a detailed Specification is prepared by officers which reflects the appropriate and realistic quality requirements for any defined need, and that offers may be judged by objective criteria.
 - ♦ Aim to ensure that levels of monitoring and training exist to ensure proper compliance and that these Regulations are regularly reviewed to take account of new circumstances.

Status

These Procurement Regulations:

- A.2. Are made under Section 135 of the Local Government Act 1972 and all other powers enabling the Council.
- A.3. Are applicable to all parts of the Council's activities.
- A.4. Are applicable where the Council is acting as agent for another body unless the principal directs otherwise.
- A.5. Must be adopted by any external contractors empowered to form Contracts on behalf of the Council and by any person who is not an officer of the Council engaged to manage a Contract on behalf of the Council.
- A.6. Shall apply to the selection of nominated suppliers and nominated sub-contractors for products covered by prime costs and provisional sums in a main contract.
- A.7. Shall be interpreted so far as possible to ensure the aims set out at A.1 of these Regulations are achieved.
- A.8. Are not applicable to expenditure between groups, or the use of any internal trading organisations set up by the Council.

Effective Period and Reviews

These Procurement Regulations:

- A.9. Are applicable from 14th May 2002.
- A.10. Shall be reviewed in their entirety by the Finance Services Manager and the Solicitor to the Council not less frequently than once every two years and any necessary report will be submitted to the Council.

Scope

These Procurement Regulations:

- A.11. Are applicable to the making by the Council of all Contracts, for the provision, supply, hire or disposal of goods, materials or intellectual products, and for the provision of services and the use of consultants and to Contracts for income.
- A.12. Are not applicable to Contracts for any interest in land nor to the direct employment of the Council's own staff.

Functionality

These Procurement Regulations:

- A.13. Are applicable to the formation of Contracts and to any matters as may arise in the process of managing Contracts that significantly change, vary or terminate any such Contract during its currency.
- A.14. Relate to the extension or renewal of Contracts beyond their initial term.
- A.15. Are without prejudice to the need for budget holders to ensure that budgets are not exceeded.
- A.16. Are without prejudice to the requirements of UK or EU legislation governing any Contract in which case those requirements shall be followed (even if they conflict with these Regulations).

Exemptions

Exemptions from these Regulations may only be granted:

- A.17. By a Committee or the Council, in relation to any particular procedure, whose decision shall specify the procedure to be followed.

Partnering Agreements

- A.18. The Contracting Officer shall have regard to Guidelines when considering the development of Partnering Agreements. Partnering Agreements have no legal status and are intended to define the behaviour and approach within the formal Contract rather than to supersede or add to any legal responsibilities inherent within the Contract.

Financial Parameters

Where monetary figures are specified in these Regulations:

- A.19. The Finance Services Manager shall review them at least as frequently as once in every financial year.
- A.20. The Finance Services Manager is authorised to vary them in line with official rate of inflation.
- A.21. They shall be without prejudice to the financial thresholds of EU Procurement Directives, set out at C.4 of these Regulations, which shall take precedence.

Where monetary figures refer to Contract values (as in C)

- A.22. Against which an estimate of Contract expenditure is made, the requirement shall not be artificially split to avoid competition, neither shall:
- ♦ Any other form of disaggregation is accepted for similar purposes.
 - ♦ A group, service or section of the Council be permitted to regard itself as a 'discrete operational unit' within the terms of EU procurement Directives.
- A.23. These relate to the estimated value over the term of the Contract (or over four years if the term is four years or longer). In estimating the Contract value the Contracting Officer shall take account of historic cost and an assessment of future trends or, where the requirement is new, the best estimate of value available at the time.

Bonds or Guarantees:

- A.24. May be required of a Contractor or a parent company by the Contracting Officer, having taken due account of risks involved for the Council. Guidance as to the kind of situation where risk arises is provided in Guidelines.
- A.25. Are likely to be required if any one Contract is expected to exceed £250,000 then the Contracting Officer shall consult with the Financial Services Manager as to whether a bond or guarantee is required.

Private Interests

- A.26. No Member, employee or agent of the Council shall improperly use their position to obtain any personal or private benefit from any Contract entered into by the Council.
- A.27. Members and employees of the Council shall comply with the requirements of the Local Government Act 1972 and relevant regulations and codes of conduct about the declaration of private interest in Contracts with the Council. Such interests must be declared to the Solicitor to the Council for inclusion in the appropriate registers.

B. Responsibilities and duties

Responsibilities

- B.1. There shall always be a Chief Officer responsible for a Contract throughout the Contract term as well as during its formation.
- B.2. No officer may carry the responsibility of both the Chief Officer and the Contracting Officer for the same Contract. Any suitable officer, however, may carry either responsibility on its own providing that it has been properly delegated to them in accordance with these Regulations.
- B.3. No officer may carry the responsibility of both Chief Officer and Contract Manager for the same Contract. Any suitable officer, however, may carry either responsibility on its own providing that it has been properly delegated to them in accordance with these Regulations.
- B.4. Any officer may discharge both the duties of a Contracting Officer and a Contract Manager for the same Contract at the discretion of the Chief Officer, the Chief Officer having first considered the desirability of any separation of duties.

Duties

The following duties are assigned to a Chief Officer

A Chief Officer shall:

- B.5. **Personally** ensure awareness of these Regulations and Guidelines within their Group and that they are followed.
- B.6. **Acting with the other Chief Officers** issue from time to time Council Rules for Contracts. These rules, which provide the detail of procedures, shall follow Guidelines and be agreed with the Finance Services Manager and the Solicitor to the Council. Council Rules may expand on Guidelines but may not contradict Regulations. In particular Chief Officers shall follow Guidelines in setting rules for low value Contracts.
- B.7. **Personally** ensure that where he or she is not taking direct responsibility for a Contract (as the Chief Officer for that Contract) then this responsibility is delegated in accordance with these Regulations for both the formation and the duration of the Contract.
- B.8. **Personally** appoint Contracting Officers and Contract Managers with defined responsibilities and record these in writing within the Council Register. Such appointments may include staff of contractors and other external bodies who are empowered by the Council to act on its behalf in these matters, and who are thereby excluded from participating in the Contract concerned.

Chief Officers (or those persons delegated) shall.

- B.9. Ensure that Contracting Officers and Contract Managers are properly trained and monitored.

- B.10. Ensure that sufficient persons are designated as Tender Opening Officers, (normally one from the Legal and Democratic Service and one from the Audit section) to enable at least two persons to open and record, at one time. All Tenders received in connection with each Contract (of which the Contracting Officer or the Contract Manager shall not be one).
- B.11. Ensure that records required under these Regulations are fully kept in the Council Register and available to persons needing to see them. In connection with this, these records must be freely available to Financial Services Manager and the Solicitor to the Council.
- B.12. Ensure that full use is made of Corporate Contracts and the services provided by Information Services.
- B.13. Authorise the following exceptional variations to an existing Contract, providing that the Chief Officer is satisfied that the change is in the best interests of the Council:
- ♦ A negotiated variation not provided for within the terms or conditions of the Contract and which the Finance Services Manager and Solicitor to the Council have agreed. (In cases where such variations are of a minor nature and have minimal or no effect upon the overall costs of the Contract, a Contract Manager is empowered to negotiate and agree new terms without further reference - see clause B.25 of these Regulations).
- B.14. Where it is decided to compile Approved Lists, ensure that they are properly maintained in accordance with current Legislation and the advice provided in Guidelines.

The following duties are assigned to a Contracting Officer

Contracting Officers shall:

- B.15. Make themselves fully aware of:
- ♦ Regulations,
 - ♦ Guidelines,
 - ♦ Financial Regulations,
 - ♦ Guidelines on the conduct of officers,
 - ♦ Council Rules.
- B.16. Before starting any contracting procedure:
- ♦ Ensure where the total expenditure exceeds £50,000 that authorisation for the expenditure is obtained from the relevant Policy Committee before the Council is contractually bound to proceed
 - ♦ Ensure that an appropriate entry has been made in the Council Register.
 - ♦ Determine (after seeking advice if needed) whether there are any requirements of UK or EU Legislation governing that Contract. If so those requirements shall be followed (even if they conflict with these Regulations).
 - ♦ Determine the competitive process to be followed by reference to C.4 of these Regulations.

- ♦ Determine whether, as the result of the award of proposed Contract, any staff will be transferred from the Council or from one Contractor to another Contractor. If so, seek advice concerning the Transfer of Undertakings Protection of Employment Regulations (TUPE) from the Human Resources Manager and Solicitor to the Council.
- B.17. Ensure that any Contract includes a proper Specification (as defined). Ensure that, where appropriate, the Specification encourages the use of re-used or recycled materials and products. Also that, where appropriate, the Specification is written to encourage minimised lifetime costs for the Product. The Contracting Officer shall ensure that wherever possible generic rather than branded products are specified.
- B.18. Ensure that any Contract includes the mandatory clauses set out at Schedule I of these Regulations, as well as clear and appropriate conditions governing at least: price, time of payment, delivery, warranty, compliance with the Specification and (for services) duration.
- B.19. Ensure, having regard to Guidelines, that any Invitation to Tender contains clear criteria for award and that this reflects a proper balance between cost and quality.
- B.20. Ensure that appropriate reply labels are sent out with each invitation to Tender, showing the address of the Solicitor to the Council, and the matter to which the Invitation to Tender relates.
- B.21. At the conclusion of any contracting procedure a Contracting Officer may accept any appropriate Tender in accordance with the arrangements set out at F13 to F16.

The following duties are assigned to a Contract Manager

Contract Managers shall:

- B.22. Make themselves fully aware of:
 - ♦ Regulations,
 - ♦ Guidelines,
 - ♦ Financial Regulations,
 - ♦ Guidelines on the conduct of officers,
 - ♦ Council Rules.
- B.23. Acquaint themselves fully with the terms and conditions of the Contract.
- B.24. Establish and maintain a programme of Contract monitoring against agreed performance indicators including a monitor of complaints and a procedure for regular reporting of the Contractor's performance against Specification to the Chief Officer or other appropriate officer.
- B.25. Authorise the following variations, providing that they are satisfied that the change is in the best interests of the Council, unless the Chief Officer for the Contract expressly excludes this authority in writing:

- ♦ A negotiated variation provided for within the terms or conditions of the Contract
- ♦ Minor changes to the Specification or delivery of the Contract that have minimal, or no effect, on the overall costs of the Contract

The following relates to all Officers with defined responsibilities under the Regulations

All such Officers shall:

- B.26. Record (with reasons), in the Council Register, sign and date, any significant decisions taken under these Regulations these records can be held in a manual or secure and auditable electronic form.
- B.27. Ensure that all documentation for the Contract shall be kept securely (which may include electronically) in one place. Original paper copies will be kept in a secure place and where possible by the Solicitor to the Council.
- B.28. Ensure that high value Contracts (in excess of £100,000 in total value) are notified to the Finance Services Manager who shall maintain a register of such contracts.

C. Procedures

A key requirement of these Regulations is to ensure competitiveness, the primary method of achieving this is through a competitive process. These Regulations set a framework for the competitive process which strikes the balance between price and quality whilst keeping bureaucracy to a minimum.

The competitive process

Instances where there is no requirement for competition:

- C.1. There is no requirement for competition for work placed by any group, service or section with any internal trading organisations. However where a trading organisation is known to offer similar services but the value of the work is above the low value threshold (£20,000) set out above, then Contracting Officers may seek competition. There is an expectation in these circumstances, however, that the Contracting Officer will be able to demonstrate that competition is likely to lead to better value for money. This may take into account not only of price but of the total cost to the Council of both the competitive exercise and the loss of revenue within the trading unit.
- C.2. Any goods or services ordered from other Council services will be deemed as having satisfied the competition requirement.
- C.3. Where goods, services or works are purchased, by another public body or purchasing organisation (which has carried out a competitive process to obtain prices) on behalf of the Council or by the Council through a contract, properly let by another such organisation, then this shall be deemed as having satisfied the requirement for competition. Notwithstanding this, Contracting Officers shall satisfy themselves that a proper process has been followed in respect of EU Procurement Directives where the value of the Contract is above the threshold.

Determining which value threshold

- C.4. The Contracting Officer shall determine, in accordance with A.23 the estimated value of the Contract and thereby the thresholds to be used, which shall be as follows:

- ♦ Below £20,000
- ♦ Between £20,000 and EU procurement thresholds
- ♦ Above the EU procurement thresholds

EU procurement threshold values are currently:

- ♦ *For Works* £3,861,932
- ♦ *For Supplies and Services* £154,477

(These values are applicable from 1st January 2002. For term contracts this estimated total value relates to the entire term or four years whichever is the

less. Note: Different thresholds apply for Supplies and Services in the case of Prior Indicative Notices (PIN). See Guidelines for further advice).

- C.5. For Contracts with an estimated total value below £20,000
- C.5.1. The Contracting Officer shall have regard to Council Rules in deciding how to proceed and shall pay particular attention to Guidelines in respect of these low value Contracts.
- C.5.2. In the event that Council Rules for low value Contracts have not been agreed or established then the group will be required to adopt the process for small value Contracts set out in Guidelines.
- C.6. For Contracts with a value over £20,000 (or a duration of more than twelve months) and below EU procurement thresholds:
- C.6.1. The Contracting Officer shall make full use of Corporate Contracts and observe the provisions of C.1.
- C.6.2. The Contracting Officer shall arrange for a competitive Tender to be undertaken, decide and record:
- ♦ How to establish which Tenderers are willing and able to Tender, or where an Approved List exists for the type of Product required, the selection of Tenderers from that list.
 - ♦ How many Tenderers should be invited to Tender, based upon a minimum of four (4) for Contracts over £20,000.
 - ♦ The criteria to be used to select Tenderers and the method of making this public, the criteria should have due regard to the available Tenderers and Guidelines.
 - ♦ The form in which Tenderers shall be invited to Tender.
 - ♦ The criteria to be used to select the successful Contractor from among those who tendered.
 - ♦ The criteria to determine whether the chosen Contractor performs satisfactorily.
- C.7. Contracts with a total value in excess of EU procurement threshold (for term Contracts EC Directives require that this estimated total value relates to the entire term or four years whichever is the less).
- C.7.1. The Contracting Officer shall follow Regulations C.6.1 - C.6.2 except where these conflict with EU procurement Directives.
- C.7.2. EU procurement procedures are complex, the Contracting Officer shall notify the Solicitor to the Council and seek advice either from the Solicitor to the Council or from the Financial Services Manager before commencing the process, to ensure full compliance with EU Procurement Directives and the particular procedure to be used.
- C.7.3. The Contracting Officer shall comply with the procedures set out in the relevant Directives having first established to which Directive the requirement is subject.

C.7.4. The Contracting Officer shall maintain a clear record of all Contracts subject to EU Directives (for the purpose of allowing Financial Services Manager to complete annual returns) and shall also ensure a Contract Award notice is published in accordance with the requirements of any Directive.

C.8. For Single Tenders of any value.

A single Tender may only be invited when:

- C.8.1. By reason of regulation or legislation only one supplier of the Product exists.
- C.8.2. The value of the Contract is below £20,000, as defined in the rules for low value Contracts, and the cost of complying with a Tender procedure outweighs the likely benefits.
- C.8.3. Only a Proprietary Product is suitable or acceptable to customers or the Product consists of repairs or works to an existing Proprietary Product.
- C.8.4. In exceptional cases of such extreme urgency that a Tender process cannot be undertaken, in these cases the reasons for the urgency shall not be within the control of the Chief Officer or the Contracting Officer.
- C.8.5. In all such cases above, the Chief Officer and the Contracting Officer must certify the reason why and sign and date the certification in the Council Register.
- C.8.6. In all such cases above the Contracting Officer must meet the need:
 - ♦ To specify the Product in writing,
 - ♦ Where only one Tenderer is identified, to ensure the best price and conditions are negotiated and that these are recorded,
 - ♦ To ensure that provision for the adjustment in price, volumes or other variable factors has been agreed and recorded in writing.

C.9. For Contracts where there are less than the required minimum Tenderers

C.9.1. In cases where the Contracting Officer wishes to proceed with a competitive Tender, but to invite less than the minimum number of Tenderers set out at C.6.2, the Chief Officer and the Contracting Officer must certify the reason why and sign and date the certification in the Council Register.

D. Mandatory clauses

D.1. Every written Contract (or where Standard Forms of Contract are used the associated documentation) shall contain those clauses set out in the Schedule 1 to these Regulations, unless otherwise having previously been authorised by the Solicitor to the Council.

E. Approved lists

A Chief Officer may:

- E.1. Decide whether or not to keep Approved Lists of suppliers willing and able to supply products or services of any particular type or description. Where a decision is taken to keep such an Approved List, this list shall be established and maintained in accordance with Sections 17 to 22 of the Local Government Act 1988. Chief Officers must also comply with the general advice provided within Guidelines. Approved Lists cannot be used for the exclusive selection of Tenderers for any Contract above the value thresholds set in European Procurement Directives as detailed at C.4 of these Regulations (other than Contracts designated as a Part B service under the EU Services Directive). Any Approved List will be registered under the Data Protection Act 1998.

F. Processing of tenders

A key function of these Regulations is to set down a framework that can demonstrate that the requirements of public accountability and transparency are extant. To achieve this the following shall apply:

Receipt

- F.1. Returned Tenders shall be contained in a plain envelope or package with no identifying markings. The envelope or package must be securely sealed and bear the words 'Tender for...' followed by the Product to which it relates. Envelopes or packages shall be addressed impersonally to the Solicitor to the Council, who shall date stamp them and keep them in safe custody until the time appointed for opening. Envelopes or packages that do not comply with this Regulation shall be opened as part of the formal opening procedures, recorded as non-compliant and returned, unconsidered, to the Tenderer.
- F.2. The procedures for the receipt and security of tender documentation shall be recorded in the booking in register.
- F.3. When a Tender is delivered by hand the receiving officer will (if requested) give a pre-numbered receipt to the deliverer, The receipt will state the date and time of receipt and the name of the contract to which it relates. (Legal & Democratic Services will normally receive tenders).

Opening

- F.4. All tenders shall be opened and details recorded at one time by not less than two Tender Opening Officers (at which time the Contracting Officer or the Contract Manager for the Contract may be present, but shall take no part in the process).
- F.5. No Tender received after the time set for receipt shall be considered. The Solicitor for the Council shall immediately return, to the sender, any Tender rejected for late delivery and no details within such Tender shall be recorded or disclosed.

Amendment to Tenders

- F.6. No request to amend a Tender after the time fixed for receipt shall be accepted.
- F.7. If a Contracting Officer finds an error in a Tender, the Tenderer shall be given the opportunity of either confirming or withdrawing the Tender. However, (except where a standard form contract code provides to the contrary) the Contracting Officer may certify that any error contained in an offer appears to be a genuine mistake by typing or printing or arithmetic. In which case the Contracting Officer may, in consultation with the Chief Officer, draw the error to the attention of the Tenderer, and allow them to correct it.
- F.8. If, for any reason, it is necessary to amend the Specification after Tenders have been received, the Tender procedure shall be repeated unless the Contracting Officer certifies that this is not possible and why.

Post Tender Negotiations

- F.9. A Chief Officer may authorise the Contracting Officer to negotiate with a Tenderer, after that Tenderer has been chosen to be the Contractor but before acceptance, on any aspect of a Tender. Such negotiation shall be within a format laid down in Guidelines. These shall include a reasonable opportunity for the Financial Services Manager to comment if the negotiation relates to a change in price or financing cost.

Assessment of Tenders

- F.10. The assessment of Tenders shall be based upon the criteria for award set out in the Tender documents (and where appropriate, published in an EC notice).

Acceptance of Tenders

The Contracting Officer:

- F.11. May, where payment is to be made by the Council, accept the Tender(s) offering the lowest price (provided it is below the sum set in Regulation F.12) **complying with the criteria for award**, providing that budgetary provision is not exceeded. If the variation from budget is more than 10% the Finance Services Manager shall be consulted.
- F.12. Will gain approval from the relevant Committee, Council, or Members with delegated authority, to accept tenders above £100,000.
- F.13. May accept the highest Tender where payment is to be received by the Council.
- F.14. May accept a Tender not complying with the above only if the Chief Officer and the Contracting Officer together certify why it is in the Council's best interest to do so and that if the variation is more than 10% from budget the Finance Services Manager has been consulted.
- F.15. Shall place the Contract documents before the Solicitor to the Council for signature or seal, with such explanations as they may require.

G. Guidance and support

In the use of these Regulations:

- G.1. Should there be any doubt or lack of clarity as to meaning or application then officers must seek advice from auditors and legal staff in the first instance.
- G.2. Any particular matter must be read in conjunction with the Guidelines issued from time to time by the Finance Services Manager and Solicitor to the Council. (Such Guidelines may expand, but not contradict, these Regulations.)

H. Contracts under hand or under seal

- H.1. All Contracts shall be attested either Under Hand or Under Seal. The Solicitor to the Council shall be consulted if a Contract is to be attested Under Seal.
- H.2. The Contracting Officer shall consider (in consultation with the Solicitor to the Council) whether, having regard to the need for extension of the period of limitations a Contract should be attested Under Seal.
- H.3. The Solicitor to the Council shall attest a Contract Under Seal if the total value of that Contract exceeds £100,000, if the Contract is to be let under Compulsory Competitive Tendering or if the Chief Officer considers it desirable. Otherwise the Chief Officer for any Contract shall complete it Under Hand.
- H.4. The Common Seal shall be attested as required by the Council's Standing Orders, an entry of every sealing shall be made, and consecutively numbered in a book and shall be signed by the person who has attested the seal. The seal shall not be affixed without the authority of a Committee or of an officer acting under delegated powers.

Schedules

Schedule 1 - Mandatory Clauses

Mandatory Clauses for Inclusion in all Contracts

All Conditions of Contract, or (where Standard Forms of Contract are used) associated contractual documents must include certain clauses to protect the Council and the following sets out a list of such clauses. The Guidelines contain suggested wording for such clauses that may be used by Contracting Officers.

The Council may terminate a Contract on the grounds of: Bankruptcy of the Contractor Corruption Collusive tendering A material breach	1
The consequences of any termination are provided for	2
There is provision for the recovery of sums due	3
The Contractor's right (or otherwise) to assign and subcontract are properly covered	4
The arrangements for payments are properly defined	5
Waivers	6
Notices to the Contractor	7
Confidentiality	9
Amendments to Contract	9
Lien and Encumbrance	10
Continuous Improvement	11
The basis on which complaints will be dealt with	12
Insurance and indemnity including professional indemnity where applicable	13
Race relations (usually in the form of a questionnaire), Sex discrimination and discrimination on the grounds of disability in relation to the delivery of the Contract	14
In the case of service contracts a whistleblowing clause	15
The Council is not committed to accept the lowest, or any, tender	16
The implementation of the Euro	17
The Human Rights Act	18
Force majeure	19

Appendix 1

Maintenance of the Council Register

The information that shall be recorded in the Contract Register is as follows:

- ♦ Name of Contract
- ♦ Estimated value
- ♦ Name of successful Tenderer
- ♦ Tendered Amount
- ♦ Responsible Officers (Contracting, Managing, Chief)
- ♦ Start Date
- ♦ Contract Period
- ♦ Extensions of Contract Period
- ♦ Date of Completion/ Termination

And, where appropriate

- ♦ Insurances
- ♦ Performance Bonds
- ♦ Details of payments
- ♦ Total payment for contract
- ♦ Records of Health and Safety management
- ♦ Assessments of past contractual performance