

CONTRACT PROCEDURE RULES

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A Brief Guide to Contract Procedure Rules

These contract procedure rules (issued in accordance with section 135 of the 1972 Local Government Act) are intended to promote good purchasing practice and public accountability and deter corruption. Following the rules is the best defence against allegations that a purchase has been made incorrectly or fraudulently.

Officers responsible for purchasing, procurement or disposal must comply with these contract procedure rules. They lay down minimum requirements and a more thorough procedure may be appropriate for a particular contract. (For example, if Rule 8.1 would normally require that quotes be obtained, it might be appropriate in particular circumstances to seek additional quotations in writing or tender submissions. Equally, it may not always be appropriate to make use of an exemption under Rule 3 even if one might apply or be granted.)

For the purposes of these rules, where there is a requirement for communication to be in writing, this shall be deemed to include e-mail as well as hard copy.

- Follow the rules if you purchase goods or services or order building work.
- Take all necessary legal, financial and professional advice ensuring budgetary approval has been gained before the procurement process commences.
- Declare any personal financial interest in a contract. Corruption is a criminal offence.
- Conduct a value for money review and appraise the purchasing need.
- Check whether there is an existing Corporate Contract or Hampshire/National Framework agreement you can make use of before undergoing a competitive process.
- All procurement must be undertaken using the Council's electronic procurement solution to ensure all bids (quotations and tenders) and supporting information will be stored for audit and transparency purposes. All opportunities must be advertised in accordance with Regulations using the South East Business Portal, Contracts Finder and Tenders Electronic Daily via the Councils e-procurement solution.
- Allow at least four weeks for submission of bids (except in cases of emergency).

- Keep bids confidential.
- Complete a written contract or Council order before the supply or works begin, this must be placed on the Procurement portal as part of the Council's central Contracts Register.
- Identify a contract manager with responsibility for ensuring the contract delivers as intended.
- Keep records of dealings with suppliers.
- Assess each contract afterwards to see how well it met the purchasing need and Value for Money requirements.

In accordance with the Constitution, Full Council has the power to make amendments from time to time to these Contract Procedure Rules following amendments agreed by Chief Officers and the Head of Internal Audit & Risk Assurance.

DEFINITIONS

Agent	A person or organisation acting on behalf of the Council or on behalf of another organisation.
Agreement on Government Procurement	The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the European Economic Area include the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Australia, New Zealand, Aruba, Hong Kong, China, Liechtenstein and Singapore
Approved List	A list drawn up in accordance with Rule 7.2.
Award Criteria	The criteria by which the successful Quotation or Tender is to be selected (see further Rules 10 and 11.2e).
Award Procedure	The procedure for awarding a contract as specified in Rules 8, 10 and 15.
Best Value	The duty, which Part I of the Local Government Act 1999 places on local authorities, to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the Council. This terminology has now in many instances been superseded by Value for Money.
Bond	An insurance policy: if the contractor does not do what it has promised under a contract with the Council, the Council can claim from the insurer the sum of money specified in the bond (often 10% of the contract value). A bond is intended to protect the Council against a level of cost arising from the contractor's failure.

Board(s)	The Boards established by the Council to carry out certain aspects of its business. All the powers, duties and functions of the Council as contained, mentioned or referred to in the statutory provisions from time to time in force governing the exercise of those powers, duties and functions is described specifically and generally in the Terms of Reference within the Constitution for each Board appointed by the Council.
Candidate	Any person who asks or is invited to submit a Quotation or Tender.
Chief Executive	As identified in the Constitution.
Chief Officer	The officers defined as such in the Constitution
Code of Conduct	The code regulating conduct of Officers issued by the Head of Paid Service.
Constitution	The document approved by the Council which: <ul style="list-style-type: none"> • allocates powers and responsibility within the Council and between it and others • delegates authority to act to the Board, Committees and Officers • regulates the behaviour of individuals and groups through rules of procedure, codes and protocols.
Consultant	Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the Council has no ready access to employees with the skills, experience or capacity to undertake the work.
Contracting Decision	Any of the following decisions: <ul style="list-style-type: none"> • Composition of Approved Lists • Withdrawal of Invitation to Tender • Whom to invite to submit a Quotation or Tender • Shortlisting • Award of contract • Any decision to terminate a contract
Corporate Contract	A contract let by the Council to support the Council's aim of achieving Value for Money.
Borough Treasurer	As defined by the Constitution.
EU Procedure	The procedure required by Procurement Legislation where the Total Value exceeds the EU Threshold.

EU Threshold	The contract value at which the EU public procurement directives apply.
European Economic Area	The members of the European Union, and Norway, Iceland and Liechtenstein
Financial Regulations	The financial regulations outlining Officer responsibilities for financial matters issued by the Section 151 Officer in accordance with the Constitution.
Framework agreements	An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
Borough Solicitor	As identified in the Constitution.
High Profile	A high-profile purchase is one that could have an impact on functions integral to Council service delivery should it fail or go wrong.
High Risk	A high-risk purchase is one which presents the potential for substantial exposure on the Council's part should it fail or go wrong.
High Value	A high-value purchase is where the value exceeds the EU Threshold values.
Invitation to tender	Invitation to tender documents in the form required by these contract procedure rules.
Key Decision	Those decisions or recommendations (i.e. outcomes) made by individual Boards can be defined as key decisions.
Nominated Suppliers and Sub-Contractors	Those persons specified in a main contract for the discharge of any part of the contract.
Non-commercial Considerations	As defined in Section 17 of the Local Government Act 1988.
Officer	The officer designated to deal with the contract in question.
Parent Company Guarantee	A contract which binds the parent of a subsidiary company as follows: if the subsidiary company fails to do what it has promised under a contract with the Council, the Council can require the parent company to do so instead.
Priority Services	Those services required to be tendered as defined in the EU public procurement directives.
Procurement Guide	The suite of guidance documents, together with a number of standard documents and forms, which supports the implementation of these contract procedure rules.
Procurement Legislation	The Public Contracts Regulations 2015 or any successor legislation applying to English law.
Quotation	A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).
Relevant	Contracts to which these contract procedure rules apply

Contract	(see rule 4).
Section Head	The Officer's immediate superior or the Officer designated by the Service Unit Manager to exercise the role reserved to the Section Head by these contract procedure rules.
Shortlisting	The process of selecting Candidates who are to be invited to quote or bid or to proceed to final evaluation.
Tender	A Candidate's proposal submitted in response to an Invitation to Tender.
Tender record log	The log kept by the Council.
Total Value	<p>The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal calculated as follows:</p> <p>(a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period</p> <p>(b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months</p> <p>(c) where the contract is for an uncertain duration, by multiplying the monthly payment by 48</p> <p>(d) for Nominated Suppliers and Sub-contractors, the total value shall be the value of that part of the main contract to be fulfilled by the Nominated Supplier or Sub-contractor.</p>
TUPE Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No 246)	Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the authority is transferred from one organisation (eg private contractor, local authority in-house team) to another (eg following a contracting out or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of employees are transferred along with the business.
Umbrella Agreement	Means one of the following agreement types: Framework Agreements, Dynamic Purchasing System, corporate Contracts, shared service arrangements, purchase of services from another Contracting Authority, etc.
Value for money	Value for money is not the lowest possible price; it combines goods or services that fully meet the needs, with the level of quality required, delivery in time, and at an appropriate price.

SECTION 1

SCOPE OF CONTRACT PROCEDURE RULES

1. BASIC PRINCIPLES

All purchasing and disposal procedures must:

- achieve value for money for public money spent
- be consistent with the highest standards of integrity
- ensure fairness in allocating public contracts
- comply with all legal requirements
- ensure that Non-commercial Considerations do not influence any contracting decision
- support the Council's corporate and departmental aims, objectives and policies
- comply with the Council's Procurement Guide and Financial Regulations

2. OFFICER RESPONSIBILITIES

2.1 Officers

2.1.1 Officers responsible for purchasing or disposal must comply with these contract procedure rules, Financial Regulations, the Code of Conduct and with Procurement Legislation.. Officers must ensure that any Agents, Consultants and contractual partners acting on their behalf also comply.

2.1.2 Officers must:

- Follow the guidance in the Procurement Guide and ensure all contracts are passed to the Procurement Team for entry onto the Council's Contract Register. Check whether a suitable Corporate Contract or Hampshire/National Framework agreement exists before seeking to let another contract; where a suitable Corporate Contract or Hampshire/National Framework agreement exists, this must

be used unless there is a justifiable reason not to

- keep the records required by Rule 6
- take all necessary legal, financial and professional advice.

2.1.3 When any employee either of the authority or of a service provider may be affected by any transfer arrangement, Officers must ensure that the Transfer of Undertaking (Protection of Employment) (TUPE) issues are considered and obtain legal advice before proceeding with inviting Tenders or Quotations.

2.2 Chief Officers

2.2.1 Chief Officers must:

- ensure that their staff comply with Rule 2.1
- keep registers of:
 - contracts completed by signature, rather than by the Council's seal (see Rule 16.3) and arrange their safekeeping on Council premises
 - exemptions recorded under Rule 3.2.

3. EXEMPTIONS and COLLABORATIVE ARRANGEMENTS

3.1 The Council and its Boards have power to waive any requirements within these contract procedure rules for specific projects, and any such decision may be a Key Decision.

3.2 Where a proposed contract is likely to exceed the EU Threshold, a Chief Officer has no delegated powers and no exemption from these requirements can be used if the EU Procedure applies.

3.3 Where an exemption is necessary because of an unforeseeable emergency (below the EU Threshold) involving immediate risk to persons, property or serious disruption to Council services, the Chief Executive, Borough Treasurer and the Borough Solicitor may approve the exemption but they must prepare a report for the next appropriate Board to support the action taken.

3.4 All exemptions, and the reasons for them, must be recorded and shall be signed by the Chief Executive and countersigned by the Borough Treasurer and Borough Solicitor .

- 3.5 In order to secure Value for Money, the authority may enter into collaborative procurement arrangements. The Officer must consult with the Borough Treasurer where the purchase is to be made using collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium.
- 3.8.1 All purchases made via a local authority purchasing and distribution consortium are deemed to comply with these contract procedure rules and no exemption is required. However, purchases above the EU Threshold must be let under the EU Procedure, unless the consortium has satisfied this requirement already by letting their contract in accordance with the EU Procedures on behalf of this authority and other consortium members.
- 3.8.2 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.

4. RELEVANT CONTRACTS

- 4.1 All Relevant Contracts must comply with these Contract Procedure Rules. A Relevant Contract is any arrangement made by, or on behalf of, the authority for the carrying out of works, supplies and services. These include arrangements for:
- the supply or disposal of goods
 - the hire, rental or lease of goods or equipment
 - the delivery of services, including (but not limited to) those related to:
 - the recruitment of staff;
 - land and property transactions;
 - financial and consultancy services.
- 4.2 Relevant Contracts do not include:
- contracts of employment which make an individual a direct employee of the authority, or
 - agreements regarding the acquisition, disposal, or transfer of land (for which Financial Regulations shall apply).

- provision of legal services by external solicitors or barrister.

SECTION 2

COMMON REQUIREMENTS

5. STEPS PRIOR TO PURCHASE

5.1 The Officer must appraise the purchase, in a manner commensurate with its complexity and value, and taking into account any guidance in the Procurement Guide, by:

- taking into account the requirements from any relevant value for money review
- appraising the need for the expenditure and its priority defining the objectives of the purchase
- assessing the risks associated with the purchase and how to manage them
- considering what procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing, partnering, packaging strategy and collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium
- consulting users as appropriate about the proposed procurement method, contract standards and performance and user satisfaction monitoring
- drafting the terms and conditions that are to apply to the proposed contract
- setting out these matters in writing if the Total Value of the purchase exceeds £25,000.

5.2 and by confirming that:

- there is member or delegated approval for the expenditure and the purchase accords with the approved policy framework and scheme of delegation as set out in the Constitution

6. RECORDS

6.1 Where the Total Value is less than £25,000, the following records must be kept using the Council's electronic procurement solution:

- invitations to quote and all Quotations
- a record:
 - of any exemptions and the reasons for them
 - of the reason if the lowest price is not accepted
- records of communications with the successful contractor

6.2 Where the Total Value exceeds £25,000 the Officer must record the following using the Council's electronic procurement system:

- the method for obtaining bids (see Rule 8.1)
- any Contracting Decision and the reasons for it
- any exemption under Rule 3 together with the reasons for it
- the Award Criteria in descending order of importance
- Tender documents sent to and received from Candidates
- pre-tender market research
- clarification and post-tender negotiation (to include minutes of meetings)
- the contract documents
- post-contract evaluation and monitoring
- communications with and with the successful contractor throughout the period of the contract.

6.3 Records required by this rule must be kept for six years after the end of the contract (i.e. hard copies). However, written documents which relate to unsuccessful Candidates may be electronically scanned or stored by some other suitable method after 12 months from award of contract, provided there is no dispute about the award.

7. ADVERTISING, APPROVED LISTS AND FRAMEWORK

AGREEMENTS

7.1 Identifying and Assessing Potential Candidates

7.1.1 Officers shall ensure that, where proposed contracts (in excess of £50k), might be of interest to potential Candidates located in other member states of the EU, a sufficiently accessible advertisement is published. Generally, the greater the interest of the contract to potential bidders from other member states, the wider the coverage of the advertisement should be. Examples of where such advertisements may be placed include:

- the Council's website
- portal websites specifically created for contract advertisements (South East Business Portal)
- national official journals, or
- the Official Journal of the European Union (OJEU)/Tenders Electronic Daily (TED) (even if there is no requirement within the EU Procedure).

7.1.2 Officers are responsible for ensuring that all Candidates for a Relevant Contract are fully assessed. The assessment process shall establish that the potential Candidates have:

- Sound economic and financial standing (contact Accountancy)
- Sound technical ability and capacity;- and
- Are able to fulfil the requirements of the Council

7.1.3 This shall be achieved in respect of proposed contracts that are expected to exceed £50,000 by selecting firms from:

- Approved Lists of providers, maintained by the authority or on its behalf, and compiled following responses to a public advertisement, or
- shortlists assessed from expressions of interest in a particular contract submitted in response to a public advertisement.

7.1.4 Public advertisements issued in respect of Rule 7.1.3 above shall reflect the potential degree of interest from Candidates located within other member states of the EU.

7.2 Approved Lists

- 7.2.1 Approved Lists can be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise. Approved Lists cannot be used where the EU Procedure applies.
- 7.2.2 Section Heads may draw up:
- Approved Lists of persons ready to perform contracts to supply goods or services of particular types including without limitation on the basis of agreed contract terms.
 - Records must be kept to confirm the requirements of the works, goods or services, the methods used to collate the list, criteria for shortlisting and the list must be approved by Borough Solicitor and Borough Treasurer.
- 7.2.3 No person may be entered on an Approved List until there has been an adequate investigation into both their financial and their technical ability to perform the contract.
- 7.2.4 Approved Lists must be drawn up after an advertisement inviting applications for inclusion on the list. The advertisement must be placed to secure the widest publicity among relevant suppliers throughout all member states of the EU. Persons may be entered on a list between the initial advertisement and re-advertisement provided the requirements of Rule 7.2.3 are met.
- 7.2.5 The list and Shortlisting criteria must be reviewed at least annually and re-advertised at least every three years. On re-advertisement, a copy of the advertisement must be sent to each person on the list, inviting them to reapply. Review means:
- the reassessment of the financial and technical ability and performance of those persons on the list.
 - the deletion of those persons no longer qualified, with a written record kept justifying the deletion (In cases of significant failure, the Council will delete companies at the appropriate time rather than wait until the next review date).
- 7.2.6 All Approved Lists shall be maintained in an open, fair and transparent manner and be open to public inspection (on the procurement web page).

7.2.7 A register of pre-qualified contractors and Consultants (under the EU Threshold) maintained by or on behalf of central government (eg Constructionline) will be deemed to be an Approved List for the purpose of these contract procedure rules and shall not be subject to the requirements of Rules 7.2.2 to 7.2.6 inclusive.

7.3 Framework Agreements

7.3.1 The term of a Framework Agreement must not normally exceed four years (unless there is a value for money argument approved by the Borough Treasurer and Borough Solicitor to extend to a maximum of 8 years) and, while an agreement may be entered into with one provider, where an agreement is concluded with several organisations, there must be at least three in number.

7.3.2 Contracts based on Framework Agreements may be awarded by either:

- applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition and by using the Council's electronic procurement solution to record said call off, or
- 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 using the Council's electronic procurement solution and in accordance Rule 8.1.1 including the following procedure:
 - inviting the organisations within the Framework Agreement that are capable of executing the subject of the contract to submit written Tenders;
 - fixing a time limit (at least 4 weeks) which is sufficiently long to allow Tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract;
 - awarding each contract to the tenderer who has submitted the best Tender on the basis of the Award Criteria set out in the specifications of the Framework Agreement.

SECTION 3

CONDUCTING PURCHASE AND DISPOSAL

8. COMPETITION REQUIREMENTS FOR PURCHASE, DISPOSAL AND PARTNERSHIP ARRANGEMENTS

The Officer must calculate the Total Value (i.e. full life cycle cost).

The following procedures apply where there are no other procedures which take precedence. Other procedures may include agency agreements with government. If in doubt, Officers must seek the advice of the Borough Solicitor, Head of Internal Audit & Risk Assurance, or Head of Procurement

8.1 Purchasing – Competition Requirements

8.1.1 Where the Total Value for a purchase is within the values in the first column below, the Award Procedure in the second column must be followed. Shortlisting shall be done by the persons specified in the third column.

Total Value (excl vat)	Award Procedure ¹	SHORTLISTING
Less than £25,000	Written quotation	Section Head
£25,000 less than £50,000	Three written quotations via the Council's e- procurement solution	Section Head
£50,000 less than £100,000	Three tenders via the Council's e- procurement solution following an advertised tender process or via a compliantly let Umbrella agreement.	Chief Officer
£100,000 & less than EU Threshold	Three tenders via the Council's e-procurement	Chief Officer

¹Contract opportunities above £50,000 and contract awards above £25,000 must be posted on the South East Business Portal and the Council's website via the Council's e-procurement solution.

	solution following an advertised tender process or via a compliantly let Umbrella agreement	
Greater than EU Threshold	Requirements of Procurement Legislation.	Section Head in consultation with the Borough Treasurer and the Borough Solicitor

8.1.2 Where it can be demonstrated that there are insufficient suitably qualified Candidates to meet the competition requirement, all suitably qualified Candidates must be invited.

8.1.3 An Officer **must not** enter into separate contracts nor select a method of calculating the Total Value in order to minimise the application of these contract procedure rules.

8.2 Assets for Disposal

8.2.1 Assets for disposal may be sent to public auction except where better Value for Money is likely to be obtained by inviting Quotations and Tenders. (These may be invited by advertising on the Council's e-procurement solution.) In the latter event, the method of disposal of surplus or obsolete stocks/stores or assets other than land must be formally agreed with the Borough Treasurer.

8.3 Providing Services to External Purchasers

8.3.1 The Borough Solicitor and Borough Treasurer must be consulted where contracts to provide services or supply goods for organisations other than the authority are contemplated.

8.4 Collaborative and Partnership Arrangements

8.4.1 Collaborative and partnership arrangements are subject to all UK and EU procurement legislation and must follow these contract procedure rules. If in doubt, Officers must seek the advice of the Borough Solicitor Head of Internal Audit & Risk Assurance or Head of Procurement.

9. PRE-TENDER MARKET RESEARCH AND CONSULTATION (includes quotations)

9.1 The Officer responsible for the purchase:

- may consult potential suppliers prior to the issue of the Invitation to Tender in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any potential Candidate, but
- must not seek or accept technical advice on the preparation of an Invitation to Tender or Quotation from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential Candidates or distort competition, and
- should seek advice from the Borough Solicitor Head of Internal Audit & Risk Assurance or Head of Procurement.

10. STANDARDS AND AWARD CRITERIA

10.1 The Officer must ascertain what are the relevant British, European or international standards which apply to the subject matter of the contract. The Officer must include those standards which are necessary properly to describe the required quality. The Borough Solicitor must be consulted if it is proposed to use standards other than the relevant British, European or international standards.

10.2 The Officer must define Award Criteria that are appropriate to the purchase and designed to secure an outcome giving Value for Money (using whole life costing) for the authority. The basic criteria shall be:

- 'lowest price' where payment is to be made by the authority
- 'highest price' if payment is to be received, or
- 'most economically advantageous tender', where considerations other than price also apply.

If the last criterion is adopted, it must be further defined by reference to sub-criteria which may refer only to relevant considerations.

These may include price, service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, quality, relevant environmental considerations, aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance and any other relevant matters.

10.3 Award Criteria must not include:

- Non-commercial Considerations

- matters which discriminate against suppliers from the European Economic Area or signatories to the Government Procurement Agreement.

11. INVITATIONS TO TENDER (above £50,000)/QUOTATIONS (below £50,000)

11.1 The Invitation to Tender shall state that no Tender will be considered unless it is received by the date and time stipulated in the Invitation to Tender. No Tender delivered in contravention of this clause shall be considered.

11.2 All Invitations to Tender shall be advertised and submitted via the Council's e-procurement solution and advertised in accordance with Regulations and include the following:

- (a) A specification that describes the authority's requirements in sufficient detail to enable the submission of competitive offers.
- (b) A requirement for tenderers to declare that the Tender content, price or any other figure or particulars concerning the Tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose).
- (c) A requirement for tenderers to complete fully and sign all Tender documents including a form of Tender and certificates relating to canvassing and non-collusion.
- (d) Notification that Tenders are submitted to the Council on the basis that they are compiled at the tenderer's expense.
- (e) A description of the Award Procedure and, unless defined in a prior advertisement, a definition of the Award Criteria in objective terms and if possible in descending order of importance.
- (f) A stipulation that all Tenders must be submitted electronically via the Council's e-procurement solution accessed via South East Business Portal.
- (g) The method by which any arithmetical errors discovered in the submitted Tenders is to be dealt with. In particular, whether the overall price prevails over the rates in the Tender or vice versa.

11.3 All Invitations to Tender or Quotations must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply (see Rule 16).

- 11.4 The Invitation to Tender or Quotation must state that the Council is not bound to accept any Quotation or Tender.
- 11.5 All Candidates invited to Tender or quote must be issued with the same information (as listed in 11.2) at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

12. SHORTLISTING

- 12.1 Any Shortlisting must have regard to the financial and technical standards relevant to the contract and the Award Criteria. Special rules apply in respect of the EU Procedure.
- 12.2 The officers responsible for Shortlisting are specified in Rule 8.1.1.
- 12.3 Where Approved Lists are used, Shortlisting may be done by the Officer in accordance with the Shortlisting criteria drawn up when The Approved List was compiled (see Rule 7.2.2). However, where the EU Procedure applies, Approved Lists may not be used.

13. SUBMISSION, RECEIPT AND OPENING OF TENDERS (above £50,000)/QUOTATIONS (below £50,000)

- 13.1 Candidates must be given an adequate period in which to prepare and submit a proper Quotation or Tender, consistent with the complexity of the contract requirement. At least four weeks should be allowed for submission of Tenders. The EU Procedure lays down specific time periods (see guidance in the Procurement Guide Guide).
- 13.2 All Tenders must be returned via the Council's e-procurement solution via the South East Business Portal.
- 13.3 The Officer must not disclose the names of Candidates to any staff involved in the receipt, custody or opening of Tenders.
- 13.4 The Procurement Officer shall be responsible for the safekeeping of Tenders until the appointed time of opening; these will be held securely within the Council's e-procurement solution until the closing date of the Tender submission. The software prevents any access to the Tender response before official opening. The software provides full auditable records of:
- the date and
 - precise time it was received
 - Date and time of opening and
 - Opening Officer

14. CLARIFICATION PROCEDURES AND POST-TENDER NEGOTIATION

- 14.1 Providing clarification of an Invitation to Tender to potential or actual Candidates or seeking clarification of a Tender is permitted but will be done via the Council's e-procurement solution. However, discussions with tenderers after submission of a Tender and before the award of a contract with a view to obtaining adjustments in price, delivery or content (i.e. post-tender negotiations) must be the exception rather than the rule. In particular, they must not be conducted in an EU Procedure where this might distort competition; especially with regard to price (the process of Competitive Dialogue might be required with a short list of tenderers).
- 14.2 If post-tender negotiations are necessary after a single-stage Tender or after the second stage of a two-stage Tender, then such negotiations shall only be undertaken with the tenderer who is identified as having submitted the best Tender and after all unsuccessful Candidates have been informed. During negotiations tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the Tender documents. Officers appointed by the Chief Officer to carry out post-tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.
- 14.3 Post-tender negotiation must only be conducted in accordance with the guidance issued by the Borough Solicitor who must be consulted wherever it is proposed to enter into post-tender negotiation. Negotiations must be conducted by a team of at least two Officers, one of whom must be from the Procurement Team or a Service independent to that leading the negotiations.
- 14.4 Where post-tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.

15. EVALUATION, AWARD OF CONTRACT, AND DEBRIEFING CANDIDATES

- 15.1 Apart from the debriefing required or permitted by these contract procedure rules, the confidentiality of Quotations, Tenders and the identity of Candidates must be preserved at all times and information about one Candidate's response must not be given to another

Candidate.

- 15.2 Contracts must be evaluated and awarded in accordance with the Award Criteria. During this process, Officers shall ensure that submitted Tender prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.
- 15.3 The arithmetic in compliant Tenders must be checked. If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm or withdraw their Tender. Alternatively, if the rates in the Tender, rather than the overall price, were stated within the Tender invitation as being dominant, an amended Tender price may be requested to accord with the rates given by the tenderer.
- 15.4 Officers may accept Quotations and Tenders received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these contract procedure rules and, in respect of proposed contracts that are expected to exceed £50,000, the approval of the relevant Budget Holder has been secured. The awarding of contracts that are expected to exceed the EU Threshold **may only be awarded** by the Policy & Organisation Board.
- 15.5 Where the Total Value is over the EU Threshold, Procurement Legislation must be followed including ensuring notification to all Candidates simultaneously and as soon as possible of the intention to award the contract to the successful Candidate. The Officer must provide unsuccessful Candidates 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 Candidate then the Officer shall not award the contract and shall immediately seek the advice of the Borough Solicitor and Head of Procurement.
- 15.6 The Officer shall debrief in writing all those Candidates who submitted a bid about the characteristics and relative advantages of the leading bidder via the Council's e-procurement system. No information, other than the following, should be given without taking the advice of the Borough Solicitor or Head of Procurement:
- how the Award Criteria were applied
 - the prices or range of prices submitted, in either case not correlated to Candidates' names
 - the names of Candidates where there were three or more Candidates.
- 15.7 If a Candidate requests in writing the reasons for a Contracting Decision, the Officer must give the reasons in writing within 15 days of the request. If requested, the Officer may also give the debriefing

information at Rule 15.6 above to Candidates who were deselected in a pre-tender Shortlisting process.

SECTION 4

CONTRACT AND OTHER FORMALITIES

16. CONTRACT DOCUMENTS

16.1 Relevant Contracts

16.1.1 All Relevant Contracts shall be in writing in the approved format and signed by the Borough Solicitor

1.1 All Contracts:

- Contract documents must be stored on the council's e-procurement Solution.
- Contract managers (and others closely involved in managing contracts) must have read and understood the contract documents.
- Contract Managers must check that valid insurance documents are provided by Contractors, proving that the annual premium has been paid, to cover the duration of the Contract, and that copies are stored on the council's e-procurement solution.

16.1.2 All Relevant 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)
- the time, or times, within which the contract is to be performed
- the provisions for the Council to terminate the contract.

16.1.3 The Council's order form or standard terms and conditions issued by a relevant professional body must be used wherever possible.

16.1.4 In addition, every Relevant Contract or purchase must also state clearly as a minimum:

- that the contractor may not assign or sub-contract without prior written consent
- any insurance requirements

- health and safety requirements
- ombudsman requirements
- the contractor meets the Council’s equality requirements and operates in accordance with the current Equality Legislation.
- Freedom of Information Act requirements
- where Agents are used to let contracts, that Agents must comply with the Council’s contract procedure rules
- a right of access to relevant documentation and records of the contractor for monitoring and audit purposes, if relevant.
- Data Protection requirements, if relevant
- that charter standards are to be met, if relevant

16.1.5 The **formal advice** of the Borough Solicitor must be sought for the following contracts:

- where the Total Value exceeds £25,000;
- those involving leasing arrangements;
- where it is proposed to use a supplier's own terms.

16.2 Contract Formalities

16.2.1 Agreements shall be completed as follows:

Total Value	Method of completion	By
Up to £50,000	Signature	See Council Constitution Part 3 Schedule 10 (Appendix 1) ²
Above £50,000 (also see 16.3.3 below)	Sealing	(As above)

² Official orders can be signed by Chief Officers

- 16.2.2 All contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the Borough Treasurer. An award letter is insufficient.
- 16.2.3 The Officer responsible for securing signature of the contract (in accordance with these rules) must ensure that the person signing for the other contracting party has authority to bind it.

16.3 Sealing

16.3.1 Where contracts are sealed the Council's seal, must be witnessed in accordance with the Constitution.

16.3.2 Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal in line with Part 3 Schedule 10 (Appendix 1) of the Council's Constitution.

16.3.3 A contract must be sealed where:

- the Council may wish to enforce the contract more than six years after its end
- the price paid or received under the contract is a nominal price and does not reflect the value of the goods or services
- there is any doubt about the authority of the person signing for the other contracting party, or
- the Total Value exceeds £50,000.

17. BONDS AND PARENT COMPANY GUARANTEES

17.1 The Officer must consult the Borough Treasurer about whether a Parent Company Guarantee is necessary when a Candidate is a subsidiary of a parent company and:

- the Total Value exceeds £100,000, or
- award is based on evaluation of the parent company, or
- there is some concern about the stability of the Candidate.

17.2 The Officer must consult the Borough Treasurer about whether a Bond is needed:

- where the Total Value exceeds £1,000,000, or
- where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the Candidate.

18. PREVENTION OF CORRUPTION

18.1 The Officer must comply with the Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the Officer to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to in Rule 18.2 below.

18.2 The following clause must be put in every written Council contract:

“The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor’s behalf do or collude in any of the following things:

(a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done), or

(b) commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972, or

(c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees.

Any clause limiting the Contractor’s liability shall not apply to this clause.”

19. DECLARATION OF INTERESTS

19.1 If it comes to the knowledge of a member or an employee of the authority that a contract in which he or she has a personal and/or disclosable pecuniary interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Borough Solicitor who shall report such declarations to the appropriate Board.

19.2 A shareholding in a body not exceeding a total nominal value of £1,000 or 1% of the nominal value of the issued share capital (whichever is the less) is not required to be declared for the purposes of this standing order.

19.3 The Borough Solicitor shall maintain a record of all declarations of interests notified by members and Officers.

SECTION 5

CONTRACT MANAGEMENT

20. MANAGING CONTRACTS

- 20.1 Chief Officers in the sponsoring departments are to name contract managers for all new contracts. All contracts must have a named Council contract manager for the entirety of the contract.
- 20.2 Contract managers must follow the procedures set out in the Council's Procurement Guide and all contracts must be logged onto a contract register held on the Council's e-procurement solution administered by the Procurement Section in the Financial Services Unit.

21. RISK ASSESSMENT AND CONTINGENCY PLANNING

- 21.1 A business case must be prepared for all procurements . Provision for resources for the management of the contract, for its entirety, must be identified in the business case.
- 21.2 For all contracts with a value of over £50,000, contract managers must:
- maintain a risk register during the contract period
 - undertake appropriate risk assessments and for identified risks
 - ensure contingency measures are in place.

22. CONTRACT MONITORING, EVALUATION AND REVIEW

- 22.1 All contracts which have a value higher than the £50,000, or which are High Risk, are to be subject to monthly formal review with the contractor. The review may be conducted quarterly if permitted by the Chairman of the Corporate Risk Management Group.
- 22.2 For all contracts with a value higher than the EU Threshold limits, or which are High Risk, an annual report must be submitted to the Council's Management Team.
- 22.3 A Council-developed Gateway review process must be applied to all contracts deemed to be High Risk, High Value, or High Profile. This process must be applied at key stages of major procurements.
- 22.4 During the life of the contract, the Officer must monitor in respect of:
- performance
 - compliance with specification and contract cost
 - any Value for Money requirements
 - user satisfaction and risk management.
 - Compliance with the Council's equality monitoring arrangements (as stated in the contract) and with current equality legislation

annually.

- 22.5 Where the Total Value of the contract exceeds £100,000, the Officer must make a written report to the relevant Budget Holder evaluating the extent to which the purchasing need and the contract objectives (as determined in accordance with Rule 5.2) were met by the contract. This should be done normally when the contract is completed. Where the contract is to be re-let, a provisional report should also be available early enough to inform the approach to reletting of the subsequent contract.