

G CONTRACTS PROCEDURE RULES

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A: Questions to ask before you get started

Is the procurement legal ?



Does the Council have legal power to do what you are proposing ?

Does the procurement relate to the Council's statutory powers and duties ?

If you are unsure, check with Legal Services

Do I have the authority to proceed ?



Do you have either :

- Delegated power under the scheme of delegation; or
- Cabinet or committee approval
- Emergency power approval

How will the procurement be paid for ?



Do not proceed until you have identified a sufficient budget and got approval from the budget holder.

If a virement is necessary you must follow Rule E6 of the Budget and Policy Framework Procedure Rules

B: Getting started

Have you estimated the total contract value ?



See Procedure Rule G3.7

This is the essential first step as it enables you to:

- identify your budget requirements
- check whether the EU procurement rules apply – see the thresholds in Schedule 1
- select the procurement routes available to you

Have you decided what you want to procure ?



You should specify your requirements in writing at the outset – see procedure Rule G3.4

Is it an exempt contract ?



See Procedure Rule G2.2

What procurement options are available to you ?



See Flowchart C

C: Summary of procurement options

Contracts under £10, 000	Contracts between £10, 000 - £75, 000	Contracts over £75, 000 but under EU threshold	After Brexit: rules that still apply for contracts over the EU threshold
Value for money requirement – Procedure Rule G5	Three written quotations – Procedure Rule G6 NB: If s/he considers it appropriate the relevant Chief Officer may also chose a tendering procedure for contracts over £75,000 but under the EU threshold – Procedure Rules G7 to G10	Open tendering – Procedure Rule G7 Selective tendering (contracts under £25,000 only) – Procedure Rule G8 Standing list / Government approved list - Procedure Rule G9 Framework Agreement – Procedure Rule G10	Procurement procedures and timescales apply which are very similar to those before Brexit – see Schedule 1
NB: appointment of consultants covered by Procedure Rule G11			

G1. Principles and legal framework

Note 1: *a contract is made whenever the Council accepts an offer from a third party to provide works, goods or services to the Council (whether the offer is contained in a tender, quotation or otherwise). A contract can be created verbally or in writing, but please refer to Rule G18, which sets out the Council's rules relating to written contracts.*

Note 2: *in these Procedure Rules "Chief Officer" means the Chief Executive, the Executive Director (Resources), the Executive Director (Legal & Democratic), the Executive Director (Employment), the Head of Regeneration and Housing and the Chief Planning & Transportation Officer*

Principles

1.1 These Procedure Rules have four main purposes:

- to ensure that we comply with UK and EU legal requirements relating to public procurement;
- to ensure that we obtain best value from procurement
- to ensure that our procurement activities promote competition and are fair and transparent
- to avoid corruption and ensure high ethical standards

Policy Framework

1.2 The Council recognises that its procurement activities can have a direct effect on the quality of life in the Borough and on society generally. You must therefore have regard to the following when making procurement decisions:

Council's Procurement Strategy

This contains guidance on:

- sustainability and environmental impact
- contracting with the third sector

Council's Strategy for Equality and Diversity in Procurement

This contains the Council's procedural requirements and guidance for ensuring our procurement activities promote equality and diversity

These documents can be found on the "Doing Business With The Council" page on the Council's website.

Legal Framework

1.4 Council contracts must comply with:

- the rules in the Public Contracts Regulations 2015 for contracts with a value above the EU threshold (and this still applies after Brexit);
- all relevant UK legal requirements
- the Council's constitution (particularly these Contract Procedure Rules, the Finance Procedure Rules and the Scheme of Delegation)

Probity and non-compliance

1.5 A very high standard of probity is required of all officers involved in the procurement, award and management of Council contracts. A failure to comply with these Procedure Rules may result in disciplinary action against the officer concerned.

1.6 You must comply with the Council's code of conduct for employees in respect of the procurement process. If you have a conflict of interest in respect of a procurement

you must declare it to the relevant Chief Officer and take no part in the procurement process.

- 1.7 Any breach of these Rules which is regarded as significant by the Council's Chief Executive or a Chief Officer shall be will be referred to the Council's internal audit team for investigation.

G2. Application of Procedure Rules and exempt contracts

2.1 These Procedure Rules apply:

- To contracts for the purchase or works, services, goods and supplies
- To contracts which involve payment being made by the Council
- To contracts for the disposal of surplus Council goods
- Where somebody else has been appointed to carry out a procurement process on the Council's behalf

2.2 The following are exempt contracts to which the procurement procedures set out in Rules G5 to G11 do not apply but the relevant Chief Officer must be satisfied that the procurement procedure adopted secures best value for the Council and where practicable two or more contractors should be invited to submit quotations:

2.2.1 the contract is an extension of an existing contract or the works to be executed or the goods or materials to be supplied consist of repairs to or parts for existing plant or machinery and the contract has been approved by the relevant Chief Officer;

2.2.2 the goods, materials or works desired are of a proprietary or special character or are supplied by only one person or firm and no reasonably satisfactory alternative is available;

2.2.3 employment contracts and agency contracts for the provision of temporary staff;

- 2.2.4 the contract is for the engagement of an artiste or performing company;
- 2.2.5 the contract is for the purchase or production of a work of art or museum specimen;
- 2.2.6 the contract is for goods purchased or sold in a public market or fair or at an auction sale
- 2.2.7 the contract is for the borrowing or lending of money
- 2.2.8 the contract is for purchase of an interest in land or buildings
- 2.2.9 the price of the goods to be purchased is controlled by a trade organisation and there would be no genuine competition

G3 Preparing for procurement

Who has authority to carry out procurement on behalf of the Council ?

- 3.1 Procurement may only be undertaken by officers with the appropriate delegated authority either from Cabinet or the relevant committee or under the Council's scheme of delegation. Officers with delegated authority may delegate responsibility for a procurement to other officers who have the skills and knowledge appropriate to the task, but must inform them of the extent of their delegated authority and any applicable financial thresholds for the procurement.

Pre-procurement procedure

Identification of need

- 3.2 Before starting procurement you must identify the need and fully assess the options for meeting those needs. Consideration should be given to the Council's procurement strategy as appropriate and the relevant Chief Officer must:
 - (a) consider all other means of satisfying the need, including recycling and reuse where appropriate

(b) consider whether there is an appropriate framework agreement (see Rule G10) or standing list (see Rule G9) that should be used.

3.3 Before starting procurement you must identify the amount and specification of the supplies, services or works required, together with the procurement timetable. You must also ensure that you have a budget available to pay for them.

Specifications

3.4 Specifications:

(a) must state the Council's requirements in a clear and concise way, using outcome performance measures where possible.

(b) must not include requirements that are discriminatory or may distort competition or consist of non-commercial matters

(c) must not specify specific products or processes unless this is essential to meet the Council's requirements and the use or provision of an equivalent is permitted

(d) must specify quality requirements by reference to any relevant British Standards Institute, EU or international standards current at the date of the tender unless the relevant Chief Officer is satisfied that an alternative standard is appropriate

Award criteria

3.5 Before starting procurement you must record the award criteria for the contract. The award criteria must be either:

(a) lowest price (where payment is made by the Council) or highest price (where payment is received by the Council); or

(b) most economically advantageous offer (where considerations other than purchase price apply)

3.6 Where the most economically advantageous offer is chosen you must document the criteria to be applied and any weighting to be given to them. Relevant criteria may

include: price, service, quality, running costs, whole life cycle cost, experience of contractor, delivery date, cost-effectiveness, environmental considerations, aesthetic and functional characteristics, safety, after-sales service, technical support and partnering.

Estimating the contract value

3.7 Before starting procurement you must calculate the estimated contract value as this will decide the procurement procedure(s) available under these Rules and determine whether you have to follow the rules in the Public Contracts Regulations 2015 (which apply after Brexit to contracts over the EU procurement threshold – see Schedule 1 for details). When deciding the estimated contract value you must comply with the following:

- (a) estimates of value and methods of calculation must be genuine and not designed to avoid exceeding any threshold in these Rules or under the Public Contracts Regulations procurement regime. You must not artificially split contracts to lower their value.
- (b) The value of a contract should be taken to be the expected amount of consideration (in money or money's worth and net of VAT) that will be received by the person or organisation that carries out the works or provides the supplies or services over the expected lifetime of the contract (not the annual value) and taking account of any form of option to extend or renew the contract.
- (c) If the contract is of indeterminate length you should estimate the value of the contract over a period of 4 years.
- (d) Where some or all of the contract price is funded by a third party (such as a government agency) this funding should be included in the estimated contract value.

- (e) For recurrent purchases of the same type of supplies or services, the estimated value for the purpose of compliance with Public Contracts Regulations (for contracts above the EU threshold after Brexit) is the sum of all the recurrent spending within a year.
- (f) For service contracts (such as design, insurance, banking) you should include the premium or fees, commission, interest and other forms of remuneration payable

Pre-tender market research and consultation

3.8 Prior to issue of the invitation to tender / provide a quotation the relevant Chief Officer:

- (a) may consult potential suppliers in general terms about the nature, level and standard of the item required and other relevant matters provided this does not prejudice any potential candidate
- (b) must not seek or accept technical advice on the preparation of an invitation to tender / provide a quotation from anyone who may have a commercial interest in the procurement if this may prejudice equal treatment of all potential candidates or distort competition
- (c) must not discuss prices

G4. Choice of procurement procedure

- 4.1 All contracts will be dealt with under one of the procedures set out in Rules G5 to G12 unless the contract is exempt (see Rule G2.2). Flowchart C illustrates the options available.
- 4.2 Where a contract could be dealt with under more than one of the procedures, the relevant Chief Officer will decide which one of the procedures to use.

G5. Contracts up to £10, 000

- 5.1 This procedure applies to contracts where the estimated value of works, goods and services to be supplied is less than £10 000;
- 5.2 The relevant Chief Officer must be satisfied that the procedure adopted secures the best value for money for the Council and where practicable at least two quotations should be obtained. E-mailed quotations are acceptable but a copy of each quotation received must be retained on file.
- 5.3 A quotation and purchase order will create a legally binding contract between the Council and supplier. Every purchase order should contain either:
- 5.3.1 the Council's standard terms and conditions of contract (which are set out at Schedule 2); or
- 5.3.2 an appropriate set of written conditions or industry standard form of contract

G6. Contracts between £ 10 000 and £75 000

- 6.1 This procedure applies to contracts where the estimated value of works, goods and services to be supplied is between £10, 000 and £75,000.
- 6.2 The relevant Chief Officer must invite at least three written quotations. Rule G14 sets out the Council's requirements for invitations to provide a quotation.

- 6.3 E-mailed quotations are acceptable but a copy of each quotation must be retained on file.
- 6.4 The Chief Officer should normally accept the lowest quotation if payment is to be made by the Council or the highest quotation if payment is to be received by the Council. Any other quotation may be accepted only if the Executive Director (Resources) is satisfied that to do so secures best value for the Council.
- 6.5 A quotation and purchase order will create a legally binding contract between the Council and supplier. Every purchase order should contain either:
- 6.5.1 the Council's standard terms and conditions of contract (which are set out in Schedule 2); or
- 6.5.2 an appropriate set of written conditions or industry standard form of contract.

G7. Open tendering

- 7.1 This procedure may be followed for contracts of any value provided they are under the EU threshold. All those responding to the Council's public notice may submit a tender as there is no pre-selection process.
- 7.2 The relevant Chief Officer must give at least ten days public notice in one or more local newspapers and in one or more appropriate trade journals (if they exist).
- 7.3 The notice must set out the nature and purpose of the contract, invite tenders, give instructions on how to submit a tender and state the closing date for tenders (including reference to the fact that tenders will not be accepted after 2.00 p.m. on that date).
- 7.4 Within 24 hours of the Council advertising or giving public notice in any way of a contract with a value of £25,000 or more, the relevant Chief Officer must also advertise the contract on the Contracts Finder website (www.Contractsfinder.gov.uk) and make the procurement documentation (such as the specification, invitation to

tender etc) available on the Council's website. A contract award notice must also be published on Contracts Finder as soon as possible following the award of such contracts.

- 7.5 The procedure for inviting, receiving and opening tenders will be as set out in Rules G14 and G15 and the procedure for evaluating and accepting tenders will be as set out in Rule G16.

G8. Selective tendering (contracts up to £25,000 only)

- 8.1 This procedure applies to contracts for works, goods and services provided the estimated contract value does not exceed £25,000.
- 8.2 Under this procedure the Council pre-selects those it wishes to submit a tender by requesting applicants to submit an expression of interest using a pre-qualification questionnaire. This enables the Council to satisfy itself of the applicants eligibility, economic and financial standing and technical or professional capacity.
- 8.3 The relevant Chief Officer must give at least ten days public notice requesting expressions of interest in inclusion on the shortlist of persons to be invited to tender in one or more local newspapers and in one or more appropriate trade journals (if they exist)
- 8.4 The notice must set out the nature and purpose of the contract and state the closing date for applications to be included in the shortlist of persons to be invited to tender.
- 8.5 Only applicants who have satisfactorily completed an application form / pre-qualification questionnaire can be considered for inclusion on the shortlist. The relevant Chief Officer will compile a shortlist of those to be invited to tender using shortlisting criteria.

- 8.6 At least four of the applicants included on the shortlist must be invited to tender, except where the shortlist comprises three or less applicants, in which case all must be invited to tender;
- 8.7 The invitation to tender must give instructions on how to submit a tender and state the closing date for tenders (including reference to the fact that tenders will not be accepted after 2.00 p.m. on that date).
- 8.8 The procedure for inviting, receiving and opening tenders will be as set out in Rules G14 and G15 and the procedure for evaluating and accepting tenders will be as set out in Rule G16

G9 Tendering from standing lists or Government approved lists

- 9.1 This procedure applies to contracts of any value provided they are under the EU threshold.
- 9.2 If the Council has a standing list of contractors or has access to a Government approved list of contractors (e.g. Construction line) for
- the execution of specified categories or value of work or services,
 - the supply of specified categories, values or amounts of works,
- and the Chief Officer considers the list is appropriate to a contract, invitations to tender may be limited to persons included in that list.
- 9.3 At least three of the persons included in the list must be invited to tender.
- 9.4 The invitation to tender must give instructions on how to submit a tender and state the closing date for tenders (including reference to the fact that tenders will not be accepted after 2.00 p.m. on that date).
- 9.5 When compiling a tender list from the standing list, or Government approved list, the relevant Chief Officer shall:
- have regard to the need to secure reasonable competition

- ensure that those on the list are given a reasonable opportunity to tender for work and wherever possible a system of rotation should be applied in order to demonstrate fairness
- take account of the trading position of contractors and where appropriate include at least one contractor with a proven record of competitiveness in the type of work concerned
- give a proper opportunity to local contractors to tender.

9.6 The procedure for inviting, receiving and opening tenders will be as set out in Rules G14 and G15 and the procedure for evaluating and accepting tenders will be as set out in Rule G16.

Compiling and maintaining standing lists

9.7 Council standing lists:

9.7.1 shall:

- (a) be compiled and maintained by the relevant Chief Officer
- (b) contain the names of all persons who wish to be included and who are approved by the Cabinet or the relevant Chief Officer
- (c) indicate in respect of a person whose name is so included, the categories of contract and the values, in respect of those categories, for which approval has been given.

9.7.2 At least 4 weeks before a list is first compiled, notices inviting applications for inclusion in it shall be published:

- (a) in at least one local newspaper, and
- (b) in at least one newspaper or journal circulating among such persons as undertake such contracts of the specified values or categories, and
- (c) an appropriate website and

(d) sent, in the case of a review, to each person whose name appears on the list then existing, asking such persons whether they wish their name to be reconsidered for inclusion.

9.7.3 Each list shall be reviewed at regular intervals, (being not less than 4 years).

9.7.4 Any person included in any list maintained under this Procedure Rule may be removed from or excluded from inclusion in any such list for a period of up to 4 years if he has failed to comply with the requirements of the Council in respect of any procedural or operational matter.

9.7.5 Copies of any standing list of persons maintained under this Standing Order shall be available for public inspection

G10 Framework Agreements

10.1 Framework agreements should be considered where the Council wishes to make repeat purchases of (usually) lower value items without conducting a new procurement exercise each time. They are agreements with suppliers for the provision of supplies, works or services on agreed terms for a specific period and enable the Council to place orders as and when required at an agreed price.

10.2 These Contract Procedure Rules apply when the Council wishes to set up a framework agreement.

10.3 You should consider whether a framework agreement already exists in respect of the works, goods or services you wish to procure, as use of a framework agreement may offer better value for money for the Council. If a Council framework agreement already exists you must use this, regardless of value. The Council may also be able to place orders using framework agreements procured by central government or its agencies or other local authorities but legal advice should be sought before awarding a contract to a supplier using a framework agreement not procured by the Council.

10.4 A framework agreement may require you to hold a “mini –competition” with some or all of the suppliers within the framework agreement and you must always check the terms of the framework agreement to ensure that you comply with its terms.

G11 Consultants

11.1 This Procedure Rule shall apply to the appointment of consultants.

11.2 Consultancy work shall be advertised unless the relevant Chief Officer considers this to be inappropriate.

11.3 Where the consultancy appointment:

- has an estimated contract value of less than £10 000; or
- will be an exempt contract in accordance with Procedure Rule G2.2

the relevant Chief Officer must be satisfied that the procedure adopted secures the best value for money for the Council and where practicable at least two quotations should be obtained

11.4 Where the consultancy appointment has an estimated contract value of £10, 000 or more the relevant Chief Officer must invite at least three written quotations

11.5 Prior to accepting a quotation the relevant Chief Officer shall assess the experience and technical competence of each consultant and references shall be sought for consultants who have not previously been employed by the Council for the type of service in question

G12 Contracts subject to the Public Contracts Regulations 2015 (i.e those over the EU threshold after Brexit)

12.1 The Public Contracts Regulations 2015 apply to contracts for works goods and services over a specified value. These set out rules very similar to the old EU procurement regime. If a contract has an estimated value above the threshold levels then the procurement process must comply with the Public Contracts Regulations 2015.

12.2 The Public Contracts Regulations 2015 are lengthy and fairly complex. A summary of the timescales and procurement procedures is set out at Schedule 1 but you **must** always take legal advice before you start the procurement process if you consider that these rules may apply.

G13 E-procurement

13.1 Documents required for a procurement including invitations to tender and invitations to negotiate may be transmitted by electronic means with the agreement of the relevant Chief Officer

13.2 Responses to an invitation to tender or an invitation to negotiate may be submitted by electronic means provided that:

- (a) evidence that the transmission was successfully completed is obtained and recorded
- (b) each tender submitted electronically is supplemented by an identical signed hard copy original submitted in the manner prescribed in the advertisement or the invitation to tender or invitation to negotiate before the tender return date
- (c) electronic tenders are kept in a separate secure electronic folder under the control of the relevant Chief Officer which is not opened until the deadline has passed for receipt of tenders; and
- (d) the procedures to be used have been agreed in advance of the issuing of the request for quotations, invitation to tender or invitation to negotiate by the Executive Director (Resources).

13.3 It may be appropriate in certain circumstances to evaluate tenders by use of an electronic auction provided that

- (a) where the Public Contracts Regulations 2015 apply, the relevant Chief Officer shall comply with those Regulations

- (b) where a decision to use an electronic auction is made, notice of the fact shall be stated in the notice required by Procedure Rule G7 or G8
- (c) before proceeding with an electronic auction, the relevant Chief Officer shall make a full initial evaluation of the tenders in accordance with the agreed contract award criterion/evaluation criteria and with the weighting fixed for them to determine which are admissible tenders
- (d) all tenderers who submit admissible tenders shall be invited simultaneously by electronic means to offer new prices and/or new values
- (e) the invitation shall contain all relevant information concerning individual connection to the electronic equipment being used, stating the date and time of the start of the electronic auction. The electronic auction may take place in a number of successive phases. The electronic auction may not start sooner than five working days after the date on which invitations are sent out
- (f) the invitation to tender shall state the mathematical formula to be used in the electronic auction to determine automatic re-rankings on the basis of the new prices and/or new values submitted. That formula shall incorporate the weighting of all the evaluation criteria fixed to determine the most economically advantageous offer, as indicated in the contract notice or in the specification
- (g) the invitation to tender shall specify the manner in which the electronic auction is to close
- (h) after closing an electronic auction the relevant Chief Officer shall award the contract on the basis of the results of the electronic auction
- (i) the means and procedures for carrying out the electronic auction have been agreed in advance of the issuing of the notice required by Procedure Rule G7 or G8 by the Executive Director (Resources)

G14 Invitation to tender / Invitation to quote

- 14.1 An invitation to tender shall be prepared in accordance with Rule G14.3 for all contracts with an estimated value over £75 000.
- 14.2 Where quotations are sought under Rule G6 (for contracts with an estimated value between £10 000 and £75 000) the invitation to provide a quotation shall include such matters as the relevant Chief Officer considers reasonable having regard to the value and importance of the procurement but shall as a minimum include the matters specified in paragraphs (a), (b), (e) and (i) of Rule 14.3
- 14.3 The invitation to tender shall include details of the Council's requirements for the particular contract including:
- (a) a specification of the services, supplies or works being procured and instructions on whether any variants are permissible
 - (b) the procurement timetable including the tender return date and time which shall allow a reasonable period for the applicants to prepare their tenders
 - (c) the Council's terms and conditions of contract
 - (d) the evaluation criteria including any weightings where considerations other than price apply
 - (e) pricing mechanism and instructions for completion
 - (f) whether the Council is of the view that the Transfer of Undertakings (Protection of Employment) Regulations 1981 or any succeeding legislation may apply
 - (g) form and content of method statements to be provided
 - (h) rules for submitting of tenders; and
 - (i) notice that the Council will require information relating to health and safety and equalities

- (j) notice that the Council will require the contractor to comply with the Construction (Design and Management) Regulations 2015 where applicable
- (k) any further information which will inform or assist tenderers in preparing tenders

G15. Submission and Opening of Tenders

15.1 This Rule applies where tenders have been invited using any of the procedures set out in Rules G7 to G10. Rules

15.2 Invitations to tender should be sent out using the “two envelope” system. The first envelope should have space for the name of the tenderer and the second should state the Council’s return address. Tenders should then be returned in envelope 1, which is placed inside envelope 2. Envelope 2 should be stamped with the time of its receipt by the Council.

15.3 No tender can be considered unless it:

15.3.1 has been recorded as having been received no later than 2.00 p.m. on the closing date for the receipt of tenders; and

15.3.2 has been received in a sealed envelope marked “tender for [name of contract]” and has no marking identifying the sender.

15.4 All tenders must be opened together in the same place. Tenders received electronically must be opened first.

15.5 Tenders may be submitted:

- (a) in hard copy
- (b) on CD ROM
- (c) in PDF or Word format if submitted electronically

15.6 Tenders submitted electronically must be stored in a dedicated extranet site or other location secured electronically by the relevant Chief Officer and the system used

must identify by unique password the person opening the tenders and time stamp the opening of the tenders

15.7 The following people must be present when tenders are opened:

15.7.1 the relevant cabinet portfolio holder, or some other member nominated by the portfolio holder;

15.7.2 the relevant Chief Officer or, if it is impracticable for him or her to attend, another senior officer of the same section;

15.7.3 the Executive Director (Resources) or his/ her nominee

15.8 Without prejudice to Rule 15.7 above, each of the political groups represented on the Council must be notified of tender openings and one member from each political group may attend tender openings

15.9 At the time of opening, the relevant Chief Officer or his/her representative must ensure that a record is made of all tenders received and their values.

15.10 Any tender received later than 2.00 p.m. on the closing date for the receipt of tenders must be returned as soon as practicable to the sender. A record must be kept of the receipt of the tender and of its return under this Rule. If the “two envelope” system has not been adopted, the tender may be opened to ascertain the name and address of the sender but no details of the tender may be disclosed.

G16. Tender Evaluation and Accepting Tenders

16.1 Tenders shall be evaluated strictly in accordance with the evaluation criteria set out in the invitation to tender / invitation to provide a quotation.

16.2 Subject to Rule G16.8 (use of local labour) the Council shall award a contract where at the time of award this represents the most economically advantageous offer or is the lowest price depending on the contract award criteria chosen pursuant to Rule

G3

- 16.3 In the event of the lowest tender being less than £10 000 or 10% (whichever is the lower) above the approved estimate the decision on acceptance may be made by the relevant Chief Officer provided the extra cost can be fully accommodated within existing budgets and, if it cannot, the decision on acceptance shall be made by the Cabinet
- 16.4 In the event of the lowest tender being either £10,000 or 10% (whichever is the lower) above the approved estimate the decision on acceptance shall be made by the Cabinet
- 16.5 All tenders must be examined for errors and discrepancies. Where examination reveals errors or discrepancies which would affect the tender figure, the chief officer must give details of the errors or discrepancies to the tenderer and invite the tenderer to confirm his tender as submitted, correct the error or discrepancy or withdraw the tender. If the tender is withdrawn, consideration of tenders will then proceed as if that tender had not been submitted. If the tender is corrected the tender will be considered as corrected.

Post tender negotiation

- 16.6 This Rule applies to situations where a formal post tender negotiation process is required (rather than to the clarification of errors and discrepancies to which Rule G16.5 applies). The relevant Chief Officer may, with the consent of the Executive Director (Resources) enter into formal negotiations with a tenderer after the receipt and opening of tenders, but prior to acceptance, in the following circumstances:
- (a) the existence of a sole supplier, or the receipt of only one tender
 - (b) when tendered prices vary significantly from the Councils estimate for the contract

- (c) when tenders cannot readily be evaluated and compared without discussion with the tenderers
- (d) if issues such as the availability of spares or the quality of the after sales service are important considerations, where tenderers differ significantly in their offers concerning these matters
- (e) where the Executive Director (Resources) and the Executive Director (Legal & Democratic) are satisfied that better prices could be obtainable
- (f) where the Executive Director (Resources) and the Executive Director (Legal & Democratic) are satisfied that it would be in the best interests of the Council

16.7 Where negotiations are carried out with tenderers in accordance with Rule 16.6 the following rules shall apply

- (a) the relevant Chief Officer shall ensure that negotiations are carried out by officers with the relevant technical and professional expertise
- (b) negotiations shall be attended by at least two officers from the relevant service
- (c) the Executive Director (Resources) and the Executive Director (Legal & Democratic) shall be given the opportunity to nominate their own representative to attend negotiations
- (d) prices and negotiated conditions shall be regarded as strictly confidential
- (e) negotiations shall take place at pre-determined times and places on Council premises unless there are good reasons for holding the negotiations elsewhere
- (f) a comprehensive written record of all negotiations shall be made, signed by all officers of the Council present and retained by the relevant Chief Officer

- (g) all documentation relating to negotiations shall be placed in sealed envelopes when transferred from one service to another in order to maintain confidentiality
- (h) where meetings are to be held with more than one contractor this shall be indicated to contractors and meetings shall be held separately and in confidence
- (i) details of the outcome of all negotiations shall be submitted to the Executive Director (Resources) and the Executive Director (Legal & Democratic) for approval
- (j) where tenders are close (ie within 5% of the contract estimate) negotiations shall be held with more than one tenderer as shall be agreed with the Executive Director (Resources) and the Executive Director Legal & Democratic Services)

G17. Nominating sub-contractors

17.1 Where a sub-contractor or supplier is to be nominated to a main contractor, the following provisions will have effect:

17.1.1 where the estimated amount of a sub-contract exceeds £75,000 then, unless the relevant Chief Officer considers that it is not reasonably practicable to obtain competitive tenders, tenders for the nomination must be invited and dealt with in accordance with these Procedure Rules as if they were for a contract with the Council.

17.1.2 any invitation for nomination under Rule G17.1.1 must require the tenderer to agree that if he is selected he will enter into a contract with the main contractor which indemnifies the main contractor in relation to the works or goods included in the sub-contract

17.2 Subject to Rules G17.3 – 17.4 below all appointments of:

- sub-contractors for the execution of specialist work; and
- suppliers for the supply of works, goods or services for which a prime cost sum is included in the main contract sum for building or civil engineering works

shall be made in accordance with these Procedure Rules unless the Chief Officer considers that it is not reasonably practicable to obtain competitive tenders .

17.3 Where the Council has already appointed a supplier for works, goods or services of the kind in question the relevant Chief Officer shall be authorised to nominate that supplier if it is considered appropriate.

17.4 Where Rule G17.3 does not apply and the prime cost sum included for any item does not exceed £75,000 the appropriate chief officer shall deal with the nomination under Rule G6.

G18. Written contracts

18.1 Contracts shall be entered into in writing respect of each procurement. The Councils standard terms and conditions are attached at Schedule 2, which contains guidance about their appropriate use.

18.2 Every contract (whether resulting from acceptance of a tender, quotation or otherwise) must be in writing and must:

18.2.1 specify the work to be done, or services or goods or materials to be provided, including any appropriate technical specifications;

18.2.2 specify the price to be paid with a statement of discounts or other deductions;

18.2.3 specify the time or times within which the contract is to be performed;

18.2.4 specify that all relevant health and safety legislation must be complied with

18.2.5 require the contractor to provide information to enable the Council to fulfil its

obligations under the Freedom of Information Act 2000

- 18.2.6 specify the appropriate level and type (e.g. employee liability, public liability, professional indemnity etc) of insurance required
- 18.2.7 specify that the contractor must comply with all applicable equality legislation and ensure that appropriate monitoring arrangements are in place to ensure that equality issues are addressed
- 18.2.8 (where the contractor may come into contact with the public as part of the contract or when performing the contract) specify that the contractor must have a procedure in place for dealing with contact with children and vulnerable adults
- 18.3 Industry standard forms of contract shall be used where these are applicable to the subject matter of the contract and the value of the contract exceeds £10 000 unless the relevant chief officer has agreed prior to the contract being awarded that some other form of written contract would be more appropriate.
- 18.4 Every contract which exceeds £75,000 in value or amounts and is for the execution of works shall provide for liquidated damages to be paid by the contractor in case the terms of the contract are not duly performed.
- 18.5 In every contract for the supply of goods or materials the value of which exceeds £75,000, a clause shall be inserted to secure that, should the contractor fail to deliver the goods or materials or any portion thereof within the time or times specified in the contract, the Council, without prejudice to any other remedy for breach of contract, shall be at liberty to determine the contract either wholly or to the extent of such default and to purchase other goods or materials as the case may be of the same or similar description to make good such default and/or in the event of the contract being wholly determined the goods remaining to be delivered.

The clause shall further secure that the amount by which the cost of so purchasing other goods or materials exceeds the amount which would have been payable to the

purchase, if they had been delivered in accordance with the contract, shall be recoverable from the contractor.

18.6 In every written contract for the execution of work or the supply of goods or services there shall be a provision that the contractor shall be prohibited from transferring or assigning directly or indirectly any portion of the contract without the written permission of the appropriate Chief Officer which permission may be either withheld or given subject to such terms and conditions as the chief officer may prescribe.

18.7 Every contract which exceeds £75,000 in value must include a clause allowing the Council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation if:

18.7.1 the contractor has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything relating to the contract or any other contract with the Council or for favouring or not favouring any person in relation to the contract or any other contract with the Council;

18.7.2 like acts have been done by any person employed by the contractor or acting on his behalf; or

18.7.3 any such person has committed any offence under the Bribery Act 2010

18.8 No tender or quotation which includes or incorporates by reference terms and conditions not incorporated in the invitation to tender or quote shall be accepted unless:

- the other persons submitting tenders or quotations have been given an opportunity to resubmit their tenders or quotations on the same basis; or
- the Executive Director (Legal and Democratic) is satisfied that the changes to the terms and conditions are insignificant.

G19. Bond

19.1 The relevant chief officer shall decide whether a bond shall be required in respect of each contract exceeding £250 000 having regard to:

19.1.1 the potential risk to the Council of dispensing with a bond, having regard to past claims experience and the estimated premium cost

19.1.2 whether there is any exceptional technical difficulty associated with the work or service to be provided

19.1.3 the extent to which selective tendering procedures have been used and enquiries made as to the technical and financial status of the tenderer

19.1.4 the value of the contract in relation to the resources of the Council

19.1.5 the period of the contract

G20. Fraud and Whistleblowing

All contractors must be informed about the Council's Whistleblowing and Anti-fraud and Corruption policies and told where these can be found on the Council's website.

Schedule 1: summary of procurement rules in the Public Contracts Regulations 2015 (for contracts above the EU threshold)

1. Introduction

- 1.1 The Public Contracts Regulations 2015 set out the legal framework for public procurement and the procedures that **must** be followed before awarding a contract the value of which exceeds set thresholds. The purpose of these procurement rules is to open up the public procurement market and to ensure the free movement of supplies, services and works within the EU. In most cases they require competition. These rules apply after Brexit. The rules are very similar to the rules which applied before Brexit.
- 1.2 The Public Contracts Regulations 2015 (SI 2015 No 102) can be viewed on the OGC Website (www.ogc.gov.uk).
- 1.3 This is only a summary of these procurement rules. If you believe your procurement may exceed the relevant threshold you **must** seek advice from Legal Services as large financial penalties can be awarded against the Council if these rules are not followed or are followed incorrectly.

2. Threshold Levels

Thresholds applicable from 1st January 2024 to 31st December 2026 are given below. Thresholds are **NOW INCLUSIVE** of VAT (not net of VAT as was the case until 1st January 2022).

Type of contract	SUPPLIES	SERVICES	WORKS
Threshold level	£214,904	£214,904	£5,372,609

3. Contracts outside the scope of the Directives

Even when a tender process is not subject to the Regulations, (for example because the estimated value of a contract falls below the relevant threshold), the principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality still apply. Some degree of advertising, which is appropriate to the scale of the contract, is likely to be necessary to demonstrate transparency.

Contracts below the thresholds but with a value of £25,000 or more

If a contract has a value below the threshold but over £25,000 then:

- No PQQ / qualification stage is permitted and the Council's selective tendering procedures cannot be used
- The contract must be advertised on the Contracts Finder website within 24 hours of being advertised in any other way and the procurement documentation must be made available on the Council's website
- The Council must publish an award notice on Contracts Finder within a reasonable time

- The Council has a statutory duty to have regard to Cabinet Office Guidance for such purchases. This guidance can be viewed at the following link <https://www.gov.uk/government/collections/procurement-policy-notes>

4. Mixed contracts

Usually it will be clear how to categorise a contract from its subject matter but there are occasions when contracts contain elements of both supplies and services, for example. In those cases:

- Where a contract covers both services and supplies, its classification should be determined by the respective values of the two elements.
- Where it covers works/supplies or works/services, it should be classified according to its predominant purpose.
- Where a contract provides for the supply of equipment and an operator it should be regarded as a services contract.
- Contracts for software are considered to be for supplies unless they have to be tailored to the purchaser's specification, in which case they are services.

5. Aggregation rules and thresholds

- 5.1 Where a single work involves more than one contract the estimated value of all the contracts must be aggregated to decide whether the threshold is reached. Where the threshold is reached each of the works contracts will be covered by the rules except small contracts (known as small lots) the value of which falls below the de minimis level provided for in the Regulations.

In determining whether the threshold has been or is likely to be reached for public supplies or services contracts, the rules require aggregation:

- of the estimated value of separate contracts for meeting a single requirement; and
- where a series of contracts or a renewable contract is entered into for supplies/services of the same type during a twelve month period.

- 5.3 Where a public authority is divided into a number of discrete operational units with devolved authority to decide independently whether to enter into procurement contracts, then aggregation need only be applied to each unit. In other cases (i.e. where authority is not devolved) the public authority as a whole must be considered for aggregation purposes.

6. New advertising requirement – Find A Tender

Generally contracts covered by the Regulations must be the subject of a call for competition by publishing a contract notice. Instead of doing this in the OJEU, the notice must be published on the Government's "Find A Tender" website. In most cases the time allowed for responses or tenders will be fixed according to the procedure used, although some reduction is possible where:

- A prior information notice (PIN) has been published sufficiently far in advance of the procurement; or
- If accelerated procedures are used; or
- Where authorities offer full and unrestricted website access to tender documents (in accordance with specific requirements set out in the Regulations).

The table setting out the timescale for each procurement procedure is set out below

Procedure		Days
Open	Minimum time for receipt of tenders from date contract notice sent	35
	Except if:	
	Tenders are returned electronically	30
	Urgency rules apply	15
	A PIN has been published	15
Restricted	Minimum time for receipt of requests to participate from the date contract notice sent PQQ replaced by the European Single Procurement Document, which must be used	30 (15 if the urgency rules apply)
	Minimum time for receipt of tenders from the date invitation to tender sent	30
	Except if:	
	Tenders are returned electronically	25
	Urgency rules apply	10
	A PIN has been published	10
Competitive with negotiation	Minimum time for receipt of requests to participate from the date contract notice sent	30 (15 if the urgency rules apply)
	Minimum time to return initial bid from the date invitation to tender sent	30
	Except if: Tenders are returned electronically	25

	Urgency rules apply	10
	A PIN has been published	10
Competitive Dialogue and innovative partnership	Minimum time for receipt of expression of interest from the date contract notice sent	30

Note: timescales may be further reduced if a prior information notice (PIN) has been published on Find A Tender no more than 12 months but not less than 35 days before the Find A Tender notice is dispatched.

Note: Shorter timescales can be agreed for the competitive dialogue and competitive with negotiation procedures provided all the bidders agree to this being done.

7. Reduced advertising requirement for some services contracts

7.1 Most services are subject to the full requirements of the Public Contracts Regulations 2015 and the old distinction between Part A and Part B services has been abolished. However, a “light touch” approach has been agreed for a limited number of services contracts (including for legal services, benefits services and health and social care services). In the case of “light touch” services:

- there is no obligation to advertise on Find A Tender for contracts with a value of less than £663,540 and the Council can determine the competition process to be followed; and
- for contracts with a value of more than £663,540 a Find A Tender advert must be published and the Council must follow a formal tender process, but the Council can determine the procedure to be followed and this need not be one of the procurement procedures set out in the Regulations

8. Choice of procurement procedure

8.1 The following award procedures are provided for in the Regulations:

- the **open procedure**, under which all those interested may respond to the advertisement on Find A Tender by tendering for the contract;
- the **restricted procedure**, under which a selection is made of those who respond to the advertisement and only they are invited to submit a tender for the contract. This allows purchasers to avoid having to deal with an overwhelmingly large number of tenders. Rather than fill in a PQQ, interested firms must now complete a Single Procurement Document;
- the **competitive dialogue procedure / competitive with negotiation procedure / innovative partnership procedure**, following the Find A Tender advert and a selection process, the authority then enters into dialogue with potential bidders, to develop one or more suitable solutions for its requirements. These procedures are more suitable for complex procurements where the Council does not consider that

the open or restricted procedures will allow the award of a contract. These procedures will allow authorities to enter into a dialogue with potential bidders.

In addition:

- there are rules for **Dynamic Purchasing Systems**, a wholly electronic system for commonly used purchases. The system is open to new potential bidders through its lifetime. Call offs are made by means of a simplified notice on Find A Tender;
- Specific provisions are included for **Central Purchasing Bodies** whereby contracting authorities can purchase from or through such bodies, which must be contracting authorities who have been set up to provide those supplies, services or works;
- There is a mandatory **standstill period** at the award stage prior to contract signature to permit unsuccessful tenderers to seek further information about an award decision, and enable them to take action in the courts where they have sufficient grounds. The standstill period is 10 calendar days if the award notice is sent by fax or e-mail and 15 calendar days if it is sent by post and the contract cannot be completed until the standstill period has come to an end.

8.2 Public authorities have a free choice between the open and restricted procedures. The competitive dialogue / competitive with negotiation procedures can be used when:

- The Council's needs can't be met without adapting available solutions; or
- The Council requires design or innovative solutions; or
- There is a need to negotiate due to nature of contract, complexity, risks or legal / financial arrangements; or
- The Council can't specify its requirements precisely; or
- The open or restricted procedure have already been used but only produced unacceptable tenders

8.3 Under restricted, competitive dialogue and competitive with negotiation procedures (those where a call for competition is required by advertising on Find A Tender), a sufficient number of participants must be selected to proceed to the tender stage to ensure genuine competition. The Regulations require a minimum of five for the restricted procedure, and three for competitive dialogue and competitive with negotiation procedures.

9. Stages in the procurement process

- Specification stage – there is a requirement to avoid brand names and other references which would have the effect of favouring or eliminating particular providers, products or services – and the requirement to accept equivalence. The Regulations now make it clear that authorities may use performance specifications rather than technical specifications. They also provide clarification on the scope to reflect environmental issues in specifications. Guidance on technical specifications is available on the OGC website.

NB: The Public Services (Social Value) Act 2012 applies to the following:

- Contracts for services
- Contracts for services plus works

- Contracts for services plus the hire or purchase of goods

Where the Act applies the Council is required to consider the following at the start of the procurement process:

- How what we plan to procure might improve the economic, social and environmental well-being of the Borough
- How we can achieve this improvement as a result of the procurement
- Whether to undertake consultation to help us decide whether we can achieve an economic, social or environmental improvement.

We are only required to act in a way which is proportionate to the services being procured. We should document whatever we decide in each case, together with the factors and evidence we had regard to in reaching a decision. Note also that the Act doesn't change the award criteria, so contracts must be awarded on the basis of lowest price or most economically advantageous offer.

- Selection stage – the rejection or selection of candidates may be based on:
 - evidence that they are unsuitable on grounds, e.g. of bankruptcy, criminal conviction or failure to pay taxes. Certain offences now require, in normal circumstances, a mandatory exclusion;
 - their economic and financial standing – e.g. that they are judged to be financially sound on the basis of their annual accounts; and
 - their technical capacity and ability – e.g. that they will be adequately equipped to do the job and that their track record is satisfactory.

NB: we have to notify all bidders of their exclusion from the selection process before the contract award decision. Where we use the restricted or negotiated procedure this means we have to notify all those bidders who do not make it onto our shortlist.

- Award stage – the award of contract will be based on various criteria to enable the Council to determine which is the “most economically advantageous” tender. We must send a contract award notice to all bidders and this must give details of the evaluation process and its result, including details of the characteristics and relative advantages of the successful bidder. A 10 or 15 days standstill period must then be observed before the contract is awarded to the successful bidder (see paragraph 8.1 above). The standstill period gives unsuccessful bidders an opportunity to apply to court to challenge our award decision. An aggrieved bidder does not need to inform us before issuing legal proceedings and once we receive court papers the procurement process is suspended unless the Council applies to court for an order lifting the suspension in order to enable us to award the contract.

10. Remedies

10.1 Aggrieved bidders can seek (potentially substantial) damages if the Council fails to comply with the Regulations. Aggrieved bidders can also apply for a declaration of ineffectiveness if

- No notice was published on Find A Tender and should have been
- The standstill period was breached

- A call off contract was used but the correct procedures were not followed.

If a declaration of ineffectiveness is made the contract in question will cease to have effect. The Council may also be obliged to pay a significant fine to the Treasury and third parties affected by the declaration may seek damages from the Council.

11. Post tender negotiations

There are restrictions on the use of post tender negotiation under the open and restricted procedures. The Regulations prevent any negotiation on price:

“In open and restricted procedures all negotiations with candidates or tenderers on fundamental aspects of contracts, variations in which are likely to distort competition, and in particular on prices, shall be ruled out; however, discussions with candidates or tenderers may be held only for the purpose of clarifying or supplementing the content of their tenders or the requirements of the contracting authorities, and provided this does not involve discrimination”.

12. Enforcement

- 11.1 The principal means of enforcement for a breach of the Regulations is action by suppliers or contractors against individual purchasers in the High Court;
- 11.2 The result might be the suspension of an incomplete contract award procedure or the setting aside of a decision in an incomplete contract award procedure. The High Court also has powers to award damages. In cases where a contract has been entered into, an award of damages is currently the only remedy that the High Court can provide.
- 11.3 The Regulations require all purchasers to include a 10-calendar day standstill period between the point when the decision on the award of the contract is made and the signature of the contract. The standstill period allows participants to seek additional debriefing from authorities. This must be asked for and provided within set periods.

Schedule 2: Standard Terms and conditions

1. The attached contract is appropriate for use in the following circumstances:
 - Standard or routine purchases with no special or unusual features
 - Low value contracts
 - To accompany a purchase order
2. The attached contract is **NOT** appropriate for use in the following circumstances:
 - High value contracts
 - “One off” procurements or contracts of an unusual or specialised nature
 - IT contracts
 - Joint venture agreements
 - Agreements relating to land and / or property
3. The attached contract must **NOT** be varied or amended unless you have first sought advice from Legal Services
4. If you are uncertain about whether the attached contract is suitable for use in respect of your procurement, seek advice from Legal Services
5. A downloadable version of the attached contract is available on the Council’s website on the “Doing Business With The Council” page.

HYNDBURN BOROUGH COUNCIL

GENERAL CONDITIONS OF CONTRACT FOR THE SUPPLY OF GOODS, MATERIALS, PLANT, EQUIPMENT OR SERVICES

1. DEFINITIONS

In these conditions

- 1.1 The “Order” means any order, requirement or instructions given concerning the Supplies by any employee of the Council with the authority to do so.
- 1.2 The “Council” means Hyndburn Borough Council
- 1.3 The “Supplier” means the person with whom the Order is placed
- 1.4 The “Supplies” means all goods, materials, equipment or services the subject of the Order
- 1.5 The “Specification” means the technical requirements and/or description of the Supplies and/or the Supplier’s proprietary specification set out in the Order and any attached documentation of the Council.

2. DELIVERY AND ACCEPTANCE

- 2.1 On delivery the Council shall not be deemed to accept the Supplies (whether or not an advice/delivery note has been signed) until the Council has had a reasonable opportunity to examine the Supplies. The Council shall have the right to reject any Supplies or part hereof which in its opinion fails to meet the Specification.
- 2.2 The Council may reject any Supplies that are not appropriately packed and labelled.
- 2.3 Property in the Supplies shall pass to the Council only when they have been delivered as specified in the Order and accepted by the Council.
- 2.4 Without prejudice to any other right or remedy of the Council, if the Supplier does not deliver the Supplies as set out in the Order, the Council will be entitled to determine this contract and to purchase other goods of the same or similar description in their place. In such circumstances the Supplier shall pay to the Council on demand the amount by which the cost of so purchasing the other goods exceeds the amount which would have been payable to the Supplier in respect of the Supplies and the Council may deduct this amount from any sums whatsoever payable by the Council to the Supplier.

3. SUPPLIER’S DOCUMENTATION

The Supplier shall provide the Council with all current and future instructions that relate to the use, and where appropriate the storage, of the Supplies. In particular the Supplier shall draw the Council’s attention to any danger which may be encountered with the storage, use, handling and application of any processes undertaken with the Supplies. Such documentation and instructions shall be in accordance with the requirements of the Health and Safety at Work etc Act 1974,

the Provision and Use of Work Equipment Regulations 1998 and any other relevant legislation in force at any time.

4. WARRANTY INDEMNIFICATION AND INSURANCE

- 4.1 With regard to the supply and delivery of any Supplies the Supplier is to be completely responsible for and shall completely indemnify the Council against any liability, loss, claim, demand or proceedings whatsoever (other than death or personal injury resulting from the negligence of the Council) whether arising under statute or otherwise in respect of personal injury to or the death of any person and injury or damage to real or personal property if such liability, loss, claim, demand or proceeding arises out of, in the course of or is caused by the supply and/or delivery of the Supplies. In respect of such injury or damage the Supplier shall affect adequate and satisfactory insurance with a reputable Insurance Company and shall produce on demand the policy for such insurance and the receipt for the current premium to any duly authorised officer of the Council.
- 4.2 The Supplier warrants that the Supplies comply with the description in the Order.
- 4.3 The Supplier warrants that the Supplies are of good quality and material.
- 4.4 The Supplier warrants that the supply of the Supplies under the Order will not infringe any third party intellectual property rights.
- 4.5 The Supplier will fully indemnify the Council against any breach of clause 4.4

5. QUALITY STANDARDS

Where an appropriate British Standard Specification, British Standard Code of Practice or European Directive is current at the date of this Contract all Supplies shall be in accordance with that Standard.

6. INSOLVENCY

The Council may at any time by notice in writing summarily determine this Contract without compensation of any amount being payable to the Supplier by the Council in any of the following events:

- 6.1 The Supplier is an individual and becomes bankrupt or has a receiving order or administration order or interim order made against him or makes any composition or scheme of arrangement with his creditors, or
- 6.2 The Supplier is a firm and any partner in it becomes bankrupt or has a receiving order or administration order or interim order made against him or makes any composition or scheme of arrangement with his creditors, or
- 6.3 The Supplier is a company and passes a resolution or a court makes an order for winding it up (except for the purpose of amalgamation or reconstruction); or an administrative receiver is appointed or an administration is made.

Such determination will not prejudice or affect any right of action or remedy, which shall have accrued at any time to the council.

7. TRANSFER OF CONTRACT

The Supplier must not assign or sublet the contract or any part of it without first getting the Council's written permission.

8. CANCELLATION ON GROUNDS OF IMPROPRIETY

The Council may cancel the contract and recover from the Supplier the amount of any loss resulting from such cancellation if:

- 8.1 The Supplier has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything relating to the contract or any other contract with the Council or for favouring or not favouring any person in relation to the contract or any other contract with the Council;
- 8.2 Like acts have been done by any person employed by the Supplier or acting on his behalf; or
- 8.3 Any such person has committed any offence under the Bribery Act 2010

9. CONTRACT RATE AND PAYMENT

- 9.1 All contract prices shall be fixed unless the Order says otherwise.
- 9.2 Payment will be made by the Council within thirty days of receiving a valid VAT invoice.
- 9.3 The Supplier's invoice must include the Order number for the Supplies and be sent to the invoice address shown on the Order.
- 9.4 Payment will normally be made direct to Supplier's bank account. The Supplier should ensure that the Council has its bank account details.
- 9.5 A valid VAT debit or credit note must support any alterations to the amount invoiced.

10. RECOVERY OF SUMS DUE TO THE DEPARTMENT

Any sum of money payable by the Supplier to the Council under the contract may be deducted from any sum then due or which at any time thereafter may become due to the Supplier under this or any other contract with the Council.

11. ARBITRATION

- 11.1 All disputes between the parties, arising out of or connected with this contract, shall be referred to an arbitrator to be agreed (within 14 days of notice being given in writing by the party requiring such agreement) by the parties or in default of such agreement to be nominated by the President of the Chartered Institute of Arbitrators save that the Council may refer such dispute to a court of competent jurisdiction in which case this paragraph will no longer have effect with respect to that dispute.

11.2 The decisions of the arbitrator shall be binding on both the Council and the Supplier. The costs of arbitration shall be borne by the unsuccessful party unless the arbitrator determines otherwise.

12. **AGENCY**

Neither the Supplier nor its employees shall in any circumstances hold itself or themselves out as being the servant, agent or partner of the Council.

13. **PATENTS**

The Supplier shall indemnify the Council against any costs, claims, proceedings, expenses and demands arising from the use, manufacture, supply or delivery of any process, article, matter or thing supplied under the contract which would constitute any infringement of any patent, right, design, trademark or copyright.

14. **WAIVER**

Any concession or waiver allowed by the Council to the Supplier in respect of any term hereof at any time shall not prevent the Council from subsequently enforcing that term and shall not be deemed a waiver of any subsequent breach.

15. **SEVERANCE**

In the event that any term, condition or provision of the contract shall be nullified or made void by any law, decree, regulation or order or by the decision or order of any court having jurisdiction, the remaining terms, conditions and provisions of the contract shall remain in full force and effect.

16. **APPLICABLE LAW**

The contract is subject to English law.

17. **APPLICATION**

These conditions are an integral part of the contract, and shall apply except to the extent that they may be inconsistent with any special conditions which apply to the contract, which shall have precedence over these conditions. These conditions shall take precedence over any standard conditions of the Supplier

18. **ORDERED VARIATIONS**

The Council shall be entitled to issue to the Supplier instructions in writing requiring the Supplier to do all or any of the following:

To omit the whole or any part or parts of the Supplies, either permanently or indefinitely or during a specific period or periods specified by the Council, provided that an instruction to omit the whole of the Supplies will only be issued if the provision of the Supplies is no longer operationally expedient to the Council.

19. **FREEDOM IN INFORMATION**

- 19.1 The Supplier shall provide all reasonable assistance to enable the Council to comply with any request received under the Freedom of Information Act 2000 (FOIA) which relates to the Contract and / or the Supplies.
- 19.2 In the event that any request made under the FOIA relates to the Supplier, the Supplies, the contract price or any other matter which falls under the auspices of this agreement, the Council shall consult with the Supplier prior to disclosure.
- 19.3 The Council shall have an absolute discretion to determine the question of disclosure having consulted with the Supplier in accordance with Clause 19.2 above.

20. **EQUALITY AND NON-DISCRIMINATION**

- 20.1 The Supplier will not discriminate directly or indirectly against any person contrary to the Equality Act 2010 or any re-enactment or any other legal requirement applicable during this Contract.
- 20.2 The Supplier will not treat a person less favourably for a reason relating to that person's disability (as defined by the Equality Act 2010) nor fail to comply with a duty under that Act to make a reasonable adjustment in relation to the disabled person.
- 20.3 Where the Supplier carries out work on the Council's premises or alongside the Council's staff or has contact with the public under this Contract, the Supplier will comply with the Council's relevant employment policies and codes of practice.
- 20.4 The Supplier will notify the Council as soon as it becomes aware of any complaint or proceedings against the Supplier alleging unlawful discrimination or any investigation of the Contractor's performance of this Contract by the Equality and Human Rights Commission or any successor body. In the event of any such complaint, proceedings or investigation, the Contractor will co-operate fully and promptly with the body undertaking the investigation or bringing the proceedings, and will indemnify the Council against all costs, charges and expenses (including legal and administrative expenses and any compensation that the Council is required to pay) arising out of such investigation or proceedings.
- 20.5 The Supplier will provide to the Council such information as the Council may reasonably request in respect of the impact of equality issues on the operation of the contract and vice versa.
- 20.6 The Council reserves the right to require the Supplier, by written request, to remove any person involved in the performance of the contract where in the Council's reasonable opinion such person is acting contrary to the requirements of this Clause 20.
- 20.7 The Supplier will discharge its obligations under this contract without infringing the human rights of any person, as defined by the Human Rights Act 1998.

21. **Contract**

In the absence of a formal contract between the parties:

The Order and any agreed written amendments will constitute a binding agreement, and

All written quotations received and formally accepted are subject to these terms and conditions and no addition or variation should be made or applied unless agreed in writing to the Council.

22. SUPPLIER RELATIONSHIP

Nothing in these terms and conditions is intended to create any legal relationship between the parties other than that of a supplier and customer.