

**Solihull Metropolitan Borough Council**

# **RULES FOR CONTRACTS**

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# RULES FOR CONTRACTS

## Introduction

The Local Government Act 1972 requires the Council to have standing orders with respect to the making of contracts. These Rules for Contracts are the standing orders required by the 1972 Act. They are part of the Council's Constitution and are, in effect, the instructions of the Council to officers and members for making contracts on behalf of the Council. The purpose of these Rules for Contracts is to set clear rules for the procurement of works, supplies and services for the Council and to ensure a system of openness, integrity and accountability, in which the probity and transparency of the Council's procurement process will be beyond reproach. Accordingly, these Rules for Contracts must be followed for **all** contracts (but excluding the categories listed in para. 3.2) for:-

- supplies to the Council;
- the supply of services to the Council; and
- the execution of works for the Council.

The Council has a Procurement Strategy, setting out how the Council intends to go about procuring works, supplies and services. Conformity to these Rules for Contracts, and the Council's Codes of Conduct, will ensure that contracts are let in accordance with the *Procurement Strategy*, the *Compliant Procurement Process* and associated *User Guides and Procedures*.

This document should be read in conjunction with Financial Regulations issued by the Section 151 Officer. Of particular interest are the processes describing how to place orders and pay invoices.

The Council is subject also to the United Kingdom Public Contracts Regulations 2015. This legislation requires contract letting procedures to be open, fair and transparent. These Rules for Contracts provide a basis for true and fair competition in contracts, by providing clear and auditable procedures, which, if followed, will give confidence that the Council has a procurement regime that is fully accountable and compliant with the legislation.

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## Definitions

In these Rules for Contracts:

**Authorising Officer** means an officer authorised to approve the placement of orders or invoices for payment

**Cabinet** means the Leader of the Council and the other members of the Council's Executive

**Cabinet Member or Cabinet** means the Member or Member body responsible for procurement decisions recommended by the Procurement Board (Constitutional responsibility for the Director of Resources & Deputy Chief Executive – B 38 “Subject to the relevant Cabinet Member or Cabinet wishing to make the decision, at the conclusion of an appropriate procurement process to enter into such agreements with preferred contractors, provided that the contractual spend is within approved budgets”)

**Contract** means the agreement between the Council and a contractor for the supply of works, supplies or services, or for any activity that generates income for the Council

**Contractor** means a supplier or provider of works, supplies or services to the Council

**Contract change note** means the document that describes changes to the original contract which have been agreed by both parties

**Contract package** means the scope for amalgamating like requirements/services currently operating at different parts of the organisation, to suit the supply market to achieve overall better value

**Contracts under seal** means contracts that are signed and sealed with the common seal of the Council giving the council a statutory limitation of 12 years i.e. claims can be made for breach of contract for 12 years

**Corporate contract** means a contract or framework agreement for the supply of works, supplies or services to the Council

**Corporate Procurement Service** means the centralised procurement service for Solihull

**CSWJETS** means Coventry, Solihull and Warwickshire Joint Etendering System, the Council's etendering portal

**Decision making body** means the body responsible for decisions in the described situation under the Council's Standing Orders

**Director** means a member of the Council's Corporate Leadership Team.

**Estimates** are the revenue budgets that are agreed annually through Full Council

**Framework Agreement** means an agreement between the Council and a contractor for the provision of estimated quantities of supplies or services. This becomes a contract when an order for a specific quantity is placed either after further competition or through the most competitive source identified in the original tender.

**FTS** Find a tender service

**Head of Procurement** means the Council's most senior procurement officer or his or her authorised representative.

**Light Touch regime** means the process described in the Public Contract Regulations 2015 for "certain social and other specific services including education" which tend to be of lower cross-border competition interest.

**Monitoring Officer** means the officer designated as such under Section 5 of the Local Government and Housing Act 1989 or his or her deputy

**Outcome based specifications** means a specification that describes the required outcomes through service delivery and leaves the method of delivery to the third party provider.

**Performance Specifications** means a specification that provides details of the methods to be adopted when delivering the required outcomes

**Procurement Approval Document (PAD)** means the document template used to produce the rationale for recommending a particular route to market to the Procurement Board

**Procurement Board** means the Officer Board responsible for all procurement decisions or recommendations to the Cabinet Member or Cabinet for decision when appropriate.

**Public procurement legislation**, The Public Contracts Regulations 2015, UK legislation affecting public sector contracts and any amendment, re-enactment or replacement of any of them.

**Quotation** means an offer to undertake a contract of £10,000 or more but less than £50,000 in value

**Right to challenge**, the community right to challenge for services under the Localism Act 2011.

**Section 151 Officer** means the Officer who has the responsibility under the Local Government Act 1972 for the proper administration of the authority's financial affairs

**Services contract** means a contract or framework agreement for the provision of services to the Council

**Simple contracts** means contracts signed for each party to provide a "consideration" with a statutory limitation of 6 years i.e. claims can be made for breach of contract for 6 years.

**SMART** Specific, **M**easureable, **A**chievable, **R**ealistic and **T**ime-Based

**Social Value** means added environment, economic and social value delivered by contractors for local communities whilst providing goods, services or works for the local authority

**Solicitor to the Council** means the Council's most senior legal officer or his or her authorised representative.

**Supplies contract** means a contract or framework agreement for the sale or hire of supplies to the Council and includes, where appropriate, installation of supplies

**Tender** means an offer to undertake a contract of £50,000 or more in value

**TUPE Regulations** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 as amended or replaced

**Works contract** means a contract for the construction, repair or maintenance of a physical asset not defined as Services in the Public Contracts Regulations 2015

<b>RULES FOR CONTRACTS</b>	
<b>Quick Reference Guide – Financial Thresholds</b>	
£5.0m +	<i>Competitive tenders and compliance with the Public Contracts Regulations 2015. Contracts in the form of Deeds must be sealed. by the Legal Department and signed by Solicitor to the Council or an Authorised Signatory</i>
£5.3m +	<i>Competitive tenders and compliance with the Public Contracts Regulations 2015 required for works, supplies and services contracts. Contracts in the form of Deeds must be sealed. Contracts under seal signed by the Solicitor to the Council or an Authorised Signatory . All other contracts signed by the Director and Head of Procurement</i>
£663,540	<i>Competitive tenders and compliance with the Public Contracts Regulations 2015 required for supplies and services contracts. Threshold relates to light touch regime for health and social care contracts. Contracts in the form of Deeds must be sealed. Contracts under seal signed by the Solicitor to the Council or and Authorised Signatory . All other contracts signed by the Director and Head of Procurement</i>
£213,477	<i>Competitive tenders and compliance with Public Contracts Regulations 2015 required for supplies and services (excluding light touch regime for health and social care) contracts. Contracts in the form of Deeds must be sealed. All other contracts signed by the Director and Head of Procurement.</i>
£50,000+	<i>Competitive tenders required. Contract on standard form of contract or bespoke form of contract. Contract signed by Head of Procurement or authorised deputy</i>
£10,000 - £49,999	<i>Competitive quotations required. Contract on official order form or standard form of contract. Contract signed by Head of Procurement or authorised deputy.</i>
Below £10,000	<i>Competitive quotations advisable however not mandated. Must either use corporate contracts where one exists or show value for money. Use official order form. See guidance in section 12.3</i>
<b>NB Any requirement over £10,000</b>	<b><i>Use a corporate contract where one exists unless there is good reason not to; and refer the requirement to Corporate Procurement Service if over £50,000</i></b>
<b>NB:PCR Thresholds</b>	<b><i>PCR Thresholds are revised every 2 years in January. Figures quoted above for Works and Concessions is (£5,336,937) and Supplies and Services (£213,477) are applicable 1<sup>st</sup> January 2022 – 31<sup>st</sup> December 2024 Figures are inclusive of VAT</i></b>

## Summary of Rules for Contracts – quick reference guide including approval levels.

<b>Procurement Process</b>	<b>All expenditure over PCR 2015 threshold for (supplies/services &gt;£213,477) compliance with Public Contract Regulations 2015</b>	<b>Over £50,000 &gt; PCR 2015 threshold</b>	<b>£10,000 to £49,999</b>	<b>Below £10,000</b>
Requirement to be referred to	Procurement Board	Corporate Procurement Service	N/A	N/A
Approval	Through Estimates and compliance with Rules for Contracts, Procurement Board for approval	Director approval.	Director approval or delegated authority to budget holder.	Budget holder
Invitation to tender / quote	> £5.3m Public Contracts Regulations 2015 supplies, services and works contracts < £5.3m For works, minimum of 3 competitive tenders which must be advertised through CSWJETS and on Contracts Finder >£663,540k health, education and social care light touch regime >£213,477k Public Contract Regulations 2015 Supplies and services	Competitive tenders. Aim for a minimum of 3, which must be advertised through CSWJETS and Contracts Finder.	Minimum of 3 written competitive quotations, Where appropriate, a minimum of 2 should be local.	Use of corporate contract or demonstrate value for money (obtaining 3 written quotations is the most effective way of demonstrating value for money. See further guidance on how to demonstrate value for money in Section 12.3)
Social Value	Social Value to be considered at the commissioning stage of the procurement. TOMs to be used with a recommended weighting of 15% to 20% in the evaluation. Exceptions to this rule must be authorised by the Procurement Board through the Procurement Approval Document (PAD)	Include Social Value Themes Outcomes and Measures (TOMs) with a weighting of 5% to 10% in the evaluation	Light touch social value with a suggested weighting of 5% in the evaluation	N/A
Opening of tenders	Electronic opening ceremony on CSWJETS	Electronic opening ceremony on CSWJETS	Electronic opening ceremony on CSWJETS when applied	N/A
Form of Contract	Standard or bespoke Form of Contract. Where contracts are in the form of Deeds they must be sealed.	Standard or bespoke Form of Contract.	Official purchase order form or Standard Form of Contract.	Official order form or Council procurement card
Contract to be endorsed /signed by	Director or Head of Procurement or authorised deputy Contracts under seal to be signed by the Solicitor to the Council or Authorised Signatory	Head of Procurement or authorised deputy	Head of Procurement or authorised deputy.	Budget holder
Exceptions to the Rules for Contracts	Not available as the Public Contract Regulations 2015 dictate the procurement processes that are to be followed	Approval for exceptions to these Rules may be granted by Procurement Board or relevant Director as documented in Procurement Board Terms of Reference.	Approval for exceptions to these Rules may be granted by Procurement Board or relevant Director as documented in Procurement Board Terms of Reference.	No exceptions required

The Section 151 officer in consultation with the Procurement Board, subject to conditions, may grant an exception to the Rules for Contracts. An exception cannot be granted where a breach of any relevant legislation would be incurred.



## 1. Objectives

The Rules for Contracts exist to achieve the aims set out below and to assist and protect the interests of the Council and individual Officers.

It is important that they are viewed as ***an aid to good management.***

Followed properly they provide protection for Officers against criticism and support good procurement practice.

Officers must be able to demonstrate that they followed procedure or had obtained the necessary authority for not doing so, in order to:-

- ✓ *ensure value for money is obtained;*
- ✓ *ensure probity in the award of Council contracts;*
- ✓ *ensure fairness, equity, openness and transparency in the treatment of contractors/suppliers;*
- ✓ *ensure that procedures for placing contracts/orders comply with legislation;*
- ✓ *ensure records are kept which demonstrate compliance with Rules for Contracts.*

## 2. Scope of Rules for Contracts

All purchases and contracts made in the name of and binding the Council, (including contracts let by schools where schools are using grant money or money other than from their delegated budgets) must comply with these Rules for Contracts, and also any contract that involves income to the Council. This includes contracts where the expenditure is grant aided by a third party. These rules also apply to a company which is controlled by the Council for the purposes of the Local Government and Housing Act 1989. Any arrangement where the Council pays or receives money or equivalent value, other than a contract to employ staff, must comply with these Rules.

This includes contracts for:

- a) buying and selling supplies;
- b) any work being carried out;
- c) services (including financial and consultancy services);
- d) hire, rental or lease (of supplies); and
- e) concession agreements

2.1 To receive and deal with expressions of interest (through the Procurement Board) from relevant bodies in providing or assisting in providing a relevant service on behalf of the Council in accordance with Part 5, Chapter 2 of the Localism Act 2011 and to consult with the relevant Cabinet member on each expression of interest that is received

### **3. Compliance**

3.1 Every contract entered into on behalf of the Council must comply with these Rules for Contracts and all relevant legislation.

3.2 The only areas excluded from these rules are:

a) Internally recharged services;

b) Schemes where the Council has delegated a function to a third party to perform and where a contract makes separate provision for procurement rules

c) Test purchasing in the course of an Officer's duty. (e.g. Trading Standards).

d) Land transactions

3.3 All contracts must be in writing. Contracts under £50,000 in value must be made on an official Council purchase order form or standard form of contract, as appropriate, approved by a designated Authorising Officer, with the Council's standard terms of trading endorsed or referred to. For works contracts, one of the standard forms of contract, such as the NEC, JCT or ICC forms may be appropriate. Legal Services will advise on other suitable forms of contract.

3.4 Responsibility for compliance with Rules for Contracts remains at all times with Council officers. Directors and the Head of Procurement will be responsible for monitoring compliance against these rules, aided by internal or external audits or inspections which will be carried out as appropriate.

### **4. Justification of Need**

4.1 Before any purchase is made consideration must be given to:

a) whether the expenditure is really necessary and

- b) whether it can be met from within existing resources or whether it is being funded through grants or other approved income sources
- c) the revenue consequences of any capital investment.

4.2 If the purchase is justified, then the exact requirements must be defined and an appropriate specification drawn up by the service.

## **5. The Procurement Board**

5.1 Composition of the Procurement Board:

- (a) Appointment and removal of Procurement Board members: from time to time in accordance with its approved terms of reference and its members must include the Chief Executive, the Section 151 Officer and the Directors.
- (b) How the Procurement Board is to conduct itself: as determined by the Procurement Board from time to time, acting reasonably and in good faith, and in any case, lawfully.

5.2 The Procurement Board shall have the following powers:

- (a) To determine whether to approve or refuse any proposed procurement processes
- (b) To monitor compliance with contract rules and monitor spend and contracts; to achieve savings;
- (c) To deal with expressions of interest from a relevant body exercising the right to challenge for a relevant service under Part 5, Chapter 2 of the Localism Act 2011;
- (d) The Section 151 Officer has the power to vary the terms of reference of the Procurement Board

5.3 When reporting to the Procurement Board for tendering and contract extensions, Officers must complete the [Procurement Approval Document](#) (PAD) or [Extension Procurement Approval Document](#) template issued by the Head of Procurement.

## PROCUREMENT GOVERNANCE

### 6. Exceptions to Rules for Contracts

- 6.1 An exception to the Rules for Contracts is a permission to let a contract without complying with one or more of the Rules. An exception to Rules for Contracts may be granted subject to conditions. An exception cannot be granted where a breach of relevant legislation would be incurred.
- 6.2 Only the Section 151 Officer in consultation with the Procurement Board may grant an exception to these Rules for Contracts or as detailed in the Procurement Board Terms of Reference. Applications for exceptions must be made in writing to the Procurement Board in a format agreed by Procurement Board detailing the exception that is requested and the justification for the exception.
- 6.3 The Section 151 Officer will keep a register of all exceptions to Rules for Contracts, which shall be available by appointment for inspection by members of the Council and the public. Exceptions granted will be recorded on the Procurement Board decision log and the Exceptions register.
- 6.4 An application for an Exception to Rules for Contracts to allow a contract to be let without genuine competition will not be granted without a cogent reason. A lack of time caused by inadequate forward planning is not a cogent reason and will not permit an Exception to Rules for Contracts. If an application is granted, the Director responsible for the contract must demonstrate that the price obtained is not in excess of the market price and that the contract represents best value for money.
- 6.5 An exception to Rules for Contracts **may** be granted in the following circumstances:
- (a) an unforeseeable emergency involving danger to life or health or serious damage to property, in which the work, supplies or services are required more urgently than would be possible if the tender or quotation procedure were followed;
  - (b) for justifiable technical reasons, the works, supplies or services can be obtained from only one supplier;

- (c) acquiring supplies or services from a different supplier would result in incompatibility with existing supplies or service or disproportionate technical difficulties;
- (d) the proposed contract is an extension to or variation of the scope of an existing contract, if permitted by the public procurement legislation i.e. below the required Public Contracts Regulations 2015 limit , *unless* the existing contract provides for an extension and the extension or variation also complies with the Public Contracts Regulations 2015 ;
- (e) the purchase of works of art, museum artefacts, manuscripts or archive collection items;
- (f) there is a need to develop and influence the market by extending the range and provision of services, provided the contract is for a fixed term of no more than three years;
- (g) it is necessary to enable the continuation of a new service, development of which was initially grant-aided, provided the contract is for a fixed term of no more than three years;
- (h) value for money can be achieved by the purchase of used vehicles, plant, equipment or materials;
- (i) when a grant from a public body includes a recommendation as to the supplier or is time limited;
- (j) in furtherance of the Council's social enterprise policy, or other economic development aims, subject to the prevailing financial support limits for this type of activity and without breaching public procurement rules;
- (k) if there are exceptional circumstances in which it would not be in the Council's best interests to follow the tender or quotation procedure or another Rule for Contract;

6.6 An exception to Rules for Contracts is granted and separate authorisation is not required in the following circumstances:

- placing an order with a single supplier under an existing corporate contract or framework agreement;
- placing an order against a contract/framework agreement let by another Public Buying Organisation where contracts have been let to allow

collaboration, e.g. Yorkshire Purchasing Organisation, Eastern Shires Purchasing Organisation etc.

- Benchmarking a single quotation against published frameworks or Public Buying Organisations' catalogues
- as part of a compliant partnering contract that contemplates a series of contracts with a single supplier;
- legislation requires the Council to let a contract differently from these Rules for Contracts;
- All utilities contracts will be let through the Corporate Procurement Service and in line with the procedures dictated by the Head of Procurement.

6.7 A flowchart describing the Exceptions approval process can be found [here](#)

## **7. Valuation of contracts and Aggregation of Requirements**

7.1 The Director responsible for each contract must record an estimated value for the contract before any offers are sought.

7.2 The value of a contract is the total amount that the Council expects to pay for the contract, either in a single sum or periodically over time.

7.3 Contracts for the same works, supplies or services must not be split into smaller, separate contracts to avoid compliance with these Rules for Contracts or the Public Contract Regulations 2015. If it will achieve best value for money, contracts for the same or similar works, supplies or services must be aggregated into a single contract of greater value subdivided into lots if appropriate, or be let as a series of contracts based on the appropriate process for the total value.

## **8. Duties of Directors and the Head of Procurement**

8.1 The Director is responsible for ensuring that all expenditure involving procurement activity complies with the Rules for Contracts, in conjunction with the Head of Procurement. He/she is also responsible for ensuring that contracts within his/her directorate are managed and operated within the terms of the contracts themselves.

8.2 The Head of Procurement is responsible for maintaining an up to date register of contracts. Contracts for less than £10,000 or one off contracts need not be recorded in the register. The contracts register is to be published

on the Council's website in accordance with the [Local Government Transparency Code](#)

- 8.3 As soon as practicable after the Council's budget has been set and in any event before the end of March in each financial year, the Director must notify the Head of Procurement of all contracts (including values) that his/her directorate plans to enter into during the following financial year. This will enable the Head of Procurement where appropriate, to publish the Council's Prior Information Notice (PIN) in accordance with the Public Contract Regulations. This has the benefit of reducing tendering timescales.
- 8.4 The Director must use corporate contracts, where they are in place. The corporate contracts register can be found here - [Contracts register](#) To do otherwise would be unlikely to give value for money for the Council and may be in breach of the Public Contracts Regulations. If no corporate contract is found then the compliant procurement process must be followed - [Compliant Procurement Process Step by Step Guide](#)
- 8.5 If there is an in-house service available that operates as a trading unit, the Director must consider, in accordance with Value for Money principles, whether that service should be used or whether a contract should be let to an external provider, although all resource implications e.g. TUPE implications and/or redundancies for directly employed staff, must be considered as part of the best value assessment.

## **9. Selection of Procurement Route**

- 9.1 When selecting the most appropriate procurement route to secure value for money, the Director, in consultation with the Head of Procurement, shall adhere to the following principles:
- (a) All practical options for contract packages and methods of procurement should be analysed and evaluated, with the object of selecting the option that most effectively ensures value for money is achieved. The preferred option must provide full, fair, transparent and open competition and be identified as the most economically advantageous route to market.
  - (b) The scope of contract packages should take into account similar themes and outcomes across services and Directorates identified

by strategic, policy and service reviews. Stakeholders within and outside the Council should be consulted about service standards and specifications and investigation of the market undertaken. Performance under any current contract should be appraised and prospective performance considered in the light of consultations and investigations.

- (c) The contract package should seek to stimulate diversity and innovation, enhance choice for service users and attract new suppliers.
- (d) Collaboration with and partnerships between the public, private and voluntary sectors should be sought, which demonstrate a shared commitment to objectives that benefit users of the Council's services.

9.2 The Council has a [Compliant Procurement Process Step by Step Guide](#) that sets out minimum requirements for reporting and decision-making with regard to contracts and the key stages and actions the Council requires major procurements to follow, including market assessment and analysis, user consultation, risk analysis and project planning and management. The Compliant Procurement Process details how contracts should be let and minimum requirements for ongoing contract monitoring and management. Embedded in the Compliant Procurement Process are links to intranet pages which describe the mandatory processes to be followed for:

- (a) The Corporate Approach to Contract Management
- (b) The Appointment of Consultants

Officers must comply with these processes before expenditure is committed through telephone calls, negotiations, purchase orders or contracts.

## **10. Authority to enter into a contract**

10.1 Officers of the Council have no authority in their own right to enter into any contract on behalf of the Council. They may only enter into a contract if authority is delegated to them or by specific decision of the Council, the Cabinet or a Committee or Sub-Committee.

10.2 Unless an officer has been given authority to enter into a contract, all



contracts involving capital expenditure must be authorised by a specific decision of the Cabinet or a Cabinet member.

- 10.3 Unless an officer has been given authority to enter into a contract, all contracts involving revenue expenditure must be authorised by a specific item in the approved revenue budget for the relevant year. A specific item in the approved revenue budget is deemed to be an authority for the relevant Director to enter into a contract up to the value estimated.
- 10.4 All contracts will be let in accordance with these Rules with the involvement of the Corporate Procurement Service in consultation with service users and technical experts. For expenditure under £50k the request for quotation process should be followed and advice can be sought from the Corporate Procurement Service.

## **11. Specifications**

- 11.1 The Director in conjunction with the Head of Procurement must ensure that an appropriate technical specification is prepared for every contract, which sets out clearly the Council's requirements with regard to the works, supplies or services to be provided.
- 11.2 All works, supplies and services must be specified by reference to relevant standards as appropriate.
- 11.3 Specifications should incorporate SMART performance criteria to enable the contract to be monitored and managed, and should build in a capacity for flexibility and innovation, to secure sustained improvements and the ability to meet changing local and national circumstances.
- 11.4 Where appropriate, specifications should identify and allocate the risks inherent in the contract.
- 11.5 If a contract may involve the transfer of employees (from the Council to a contractor or from one contractor to another), the specification should, if the contractor has assured confidentiality of personal information, include all relevant information relating to those employees.
- 11.6 The Director must obtain all necessary professional and technical advice and assistance in preparing a specification, to ensure a comprehensive document that expresses the Council's requirements and protects its interests. Consultants or other third parties who assist in the preparation of a specification must not be invited to tender or quote for the contract and must

complete adhere to declaration of interest process.

## **12 Contract procedures**

- 12.1 The Director in conjunction with the Head of Procurement must establish whether the public procurement legislation applies to a proposed contract. If in doubt, the Solicitor to the Council will advise whether the legislation applies. When public procurement legislation does apply, the Director/Head of Procurement must use the most relevant procedure as agreed by the Procurement Board. Whenever possible, a competitive procedure must be adopted.
- 12.2 The Head of Procurement will place all notices relating to contracts in Find a Tender Service (FTS) and Contracts Finder (CF) dependent upon threshold guidance.
- 12.3 It is strongly recommended that the Director should obtain at least 3 written quotations for contracts of less than £10,000 in value, however, the Director need not obtain competitive quotations but must in any event demonstrate that the Council is receiving value for money (see the “*Quick Reference Guide*” Table on page 8).

Where three quotations are not obtained then value for money could be demonstrated by the following:

- Using a corporate contract
- Direct award against an existing framework
- Benchmarking a single quotation against prices paid by colleagues in other departments/authorities
- Benchmarking a single quotation against published frameworks or Public Buying Organisations’ catalogues
- Ordering direct from a Public Buying Organisation catalogue
- Using a previous quotation exercise for similar goods/services within the last 3 months (checks should be made to ensure that total expenditure doesn’t exceed thresholds for higher value purchases where different procurement processes should be followed)
- Using internet price comparison sites once the quality of goods required has been established (screen shots to be saved)
- Using buyers’ indices for benchmarking quoted prices

All relevant documentation demonstrating value for money will need to be retained for audit or scrutiny purposes in line with Council policy.

- 12.4 There is an additional process that needs to be followed when procuring consultants. The guidance issued by the government for off payroll working through an intermediary (IR35) needs to be considered together with the authority's procedure for authorisation to appoint consultants – [Using Consultants](#)

### **13. Invitation to Formal Tender**

- 13.1 If the public procurement legislation applies to a contract, the selection of suppliers to be invited to tender for the contract must follow the requirements of that legislation.
- 13.2 If the public procurement legislation does not apply, and the estimated contract value is greater than £50,000 at least three potential contractors, who have expressed an interest against the contract notice placed on Contracts Finder, should be invited to tender. Where appropriate those invited to tender should include at least two local suppliers. The number of contractors invited to tender should ensure full competition is achieved. The placing of the contract notice should aim to achieve maximum interest amongst contractors. If less than three contractors express an interest, the decision-making body must agree to proceed, and the steps taken to try and obtain the minimum number of tenderers documented.
- 13.3 Companies expressing an interest in being invited to tender in response to a contract notice must satisfy the Council as to their legal, financial and technical capacity (including their health & safety and equality and diversity policies) to undertake the contract by participating in a selection process in a process approved by the Head of Procurement.
- 13.4 The Head of Procurement shall be responsible for ensuring that an "Invitation to Tender" procedure – that demonstrates public sector best practice – is available and adhered to, at all times.

### **14. Opening Formal Tenders**

- 14.1 The information obtained at the opening of tenders is confidential to those involved in the opening process and those directly involved in evaluation of the

tenders. Confidentiality must be maintained and any breach reported to the Monitoring Officer.

- 14.2 The Council uses electronic tendering (CSWJETS [www.csw-jets.co.uk](http://www.csw-jets.co.uk)). The tender opening process must be appropriate to the specific electronic software employed and its facilities for guaranteed receipt of tenders.

## **15. The Quotation Procedure**

- 15.1 For contracts of under £50,000 in value, suppliers may be invited to quote through Contracts Finder, CSWJETS or advertised on the Council's website.
- 15.2 The Head of Service must satisfy him/herself as to the legal, financial and technical capacity of suppliers invited to quote to undertake the contract for the Council and that they will provide value for money.
- 15.3 A sufficient number of suppliers must be invited to quote to ensure genuine competition. The minimum number is three. Where appropriate those invited to quote should include at least two local suppliers.
- 15.4 The Head of Procurement shall be responsible for all procedural aspects of seeking quotations, ensuring that probity and proper public accountability standards are in operation. Monitoring shall be carried out periodically by either the internal or external auditor.

## **16. Acceptance of Formal Tenders and Quotations**

- 16.1 Where expenditure has been approved through the budget setting process, the Procurement Board has given approval to proceed and these Rules for Contracts have been followed, the responsible officer shall review the evaluation against the award criteria and agree which tender has been successful. He/she shall not be bound to accept the lowest tender if payment is to be made by the Council or the highest tender if payment is to be received. The responsible officer is described in the Summary of Rules for Contracts table on page 8 of this document.
- 16.2 Contracts over £50,000 are to be awarded under the "most economically advantageous" criterion (see para. 16.3). The Director shall require a written report from the Head of Procurement requesting approval for acceptance and detailing the reasons for doing so. This shall be recorded in writing. In

extreme urgency the Director may agree a verbal report from the Head of Procurement, with a written report being signed off by the Director within a fortnight of this meeting. All written reports will be stored in line with the [records retention schedule](#)

- 16.3 Tenders or quotations must be evaluated on the basis of which is most economically advantageous to the Council. The basis of evaluation must be stated in the contract notice published in the FTS and in any other public notice. The basis of evaluation must also be stated in the invitation to tender or quote. When using Public Contracts Regulations 2015, the criteria for evaluation must be set out in the invitation to tender or equivalent document depending on which procedure is used, with the weightings to be given to them. The criteria may also be set out in the FTS and public notices. Inclusion of criteria such as whole life and environmental costs and social considerations is encouraged.

## **17. Electronic tendering and quotations**

- 17.1 As of September 2018 it is mandatory for Contracting Authorities including the Council to invite and receive tenders electronically. The Head of Procurement is responsible for the procedure for these processes.
- tenders and quotations will be invited electronically, and supporting documentation uploaded through the etendering portal.
  - invitations to tender and quotes will be submitted electronically through the approved e tendering system. Electronic submissions will not be made outside of the approved system. If the etendering portal is not available when tenders are due to be submitted, the tender date will be extended until the system is available. the procedure will also include arrangements for e-auctions.

## **18. Amendments and alterations to tenders and quotations**

- 18.1 Amendments to invitation to tender or invitation to quote documents, made after the invitations have been sent out, must be sent through the etendering system to all suppliers who have been invited to tender or quote as clarifications. If there is more than one clarification, the system will number them consecutively. Clarifications should be sent out in sufficient time to

allow suppliers to adjust their tenders or quotations as appropriate and no later than six days before the tender submission date for tenders over the Public Contracts Regulations 2015 thresholds.

- 18.2 A supplier's tender or quotation is its offer to the Council, which the Council may accept as it stands. Once a tender or quotation has been submitted under the Public Contract Regulation 2015, alterations will only be accepted through formal clarifications under the open and restricted procedures. When conducting negotiations under the Competitive Procedure with Negotiations, Competitive Dialogue or Innovative partnership procedures, at all stages before the final tender submission, counter offers by bidders must be made in writing through CSWJETS
- 18.3 A properly approved and -compliant Competitive procedure with Negotiation, Competitive dialogue process or Innovation Partnership will normally result in one or more Best and Final Offers as a result of negotiation with selected bidders. No alteration to the Best and Final Offer, in terms of outcomes or contract price is permitted without the specific approval of the Monitoring Officer.
- 18.4 In all other situations, if a supplier attempts to alter his offer after the last date for receipt of tenders or quotations, he must be given the opportunity to stand by or withdraw his original offer. Correction of an obvious arithmetical error, which would reduce the price to be paid by the Council or increase the price to be paid to the Council, may be accepted.
- 18.5 Where performance specifications are used, a tender or quotation that is expressed to be conditional upon the Council's acceptance of alterations to the specification or the terms and conditions of contract may be treated as non-compliant and rejected. This does not prevent the Council inviting variant bids (that is an invitation to submit an alternative bid that could then be considered as being to the Council's benefit provided that the condition applying to the mandatory reference bid is followed). If variant bids are invited, suppliers must be required to submit a mandatory reference bid based on the specification and terms and conditions included in the invitation to tender or invitation to quote, so that all bids may be compared fairly.
- 18.6 Where outcome-based specifications are used it will be for the bidder to decide the method of service delivery. Tenders or quotations will be

evaluated fairly against published evaluation criteria.

- 18.7 Before a tender or quotation has been accepted, the Head of Procurement may ask all tenderers or suppliers to maintain their tendered or quoted prices for a longer period. Tenders and quotations should in any event remain open for acceptance for a period of (ninety) days from the last date for receipt of tenders or quotations, or such other period as the Head of Procurement considers appropriate, and the form of tender or quotation should make this clear.

## **19. Contract extensions**

- 19.1 Where extensions to contracts have been included in the advert, tender documentation and the original contract award, the extensions may be agreed; where performance is satisfactory and the original contract terms are to continue (including price variations in line with the original contract) through the issuing of a contract change note (templates to be issued by the Head of Procurement). The contract change note must be kept with the original contract in line with the document retention policy.
- 19.2 For contracts over £50,000 if an extension is proposed where the terms and conditions of the original contract will be changed; the Director shall require a written report from the Head of Procurement requesting approval for acceptance and detailing the reasons for doing so. This shall be recorded in writing. In extreme urgency the Director may agree a verbal report from the Head of Procurement, with a written report being signed off by the Director within a fortnight of this meeting. Once approval is received a contract change note will be issued and kept with the original contract documentation. All written reports will be stored in line with the document retention policy. If a contract is under seal a short supplemental deed may be required and this will be dealt with on request to Legal Services.
- 19.3 Over the Public Contracts Regulations 2015 threshold, an Extension Procurement Approval Document (Extension PAD) must be taken to Procurement Board providing the business case as to why it is appropriate to extend the contract, where there have been provisions in the advert, tender documentation and subsequent contract to do so. This report must be taken to Procurement Board in a timely manner, allowing sufficient

time for retendering if the Procurement Board decides not to extend the contract.

## **20. Contract variations**

Where throughout the life of the contract there are changes to the contract either requested by the contractor or the Council which vary the contract value by more than the PCR threshold over the life of the contract, then this must be approved by the Procurement Board before final agreement with the contractor. N.B the PCR's 2015 do not in most cases allow a material change to the contract to be more than 10% of the original contract value for service and supply contracts and 15% for works contracts or 50% in exceptional circumstances, provided that the modification does not alter the overall nature of the contract. In this instance a further tender exercise must be completed. If a contract is under seal a short supplemental deed may be required and this will be dealt with on request to Legal Services.

Once approval is received from the Procurement Board or the Director if under the PCR threshold a contract change note will be issued and kept with the original contract documentation. All written reports will be stored in line with the document retention policy.

## **21. Form of Contract**

21.1 The Solicitor to the Council will decide whether a contract over the Public Contracts Regulations 2015 threshold in value is to be executed as a deed under the seal of the Council or under hand as a simple contract. As a general rule, works contracts, and high value contracts (over £5 million in value) will be executed as deeds under the Council's seal.

21.2 All contracts made as deeds must be made under the Council's Common Seal, witnessed in accordance with the relevant Standing Order of the Council's Rules of Procedure (Standing Orders) by the Solicitor to the Council or such other person appointed by the Council.

21.3 Simple contracts over the Public Contracts Regulations 2015 threshold in value must be signed for and on behalf of the Council by the Director whose directorate is responsible for the contract or the Head of Procurement or authorised deputy.



21.4 Simple contracts of between £10,000 and the Public Contracts Regulations 2015 threshold in value must be signed for and on behalf of the Council by the Head of Procurement or an authorised deputy.

## **22. Contract administration and management**

- 22.1 The Head of Procurement shall arrange for publication of a contract award notice, no later than 30 days after contract award, if appropriate (contracts over the Public Contracts Regulations 2015 threshold), and shall keep a register of the notified information, which shall be available for inspection by appointment by any Member of the Council, internal and external auditors and any member of the public.
- 22.2 The Head of Procurement shall be responsible for ensuring that a procedure on “Contract Administration and Management” is made available to all officers and partners managing contracts on the Council's behalf. The Corporate Approach to Contract Management is approved by the Procurement Board and officers identified as contract managers must comply with that process [Corporate Approach to Contract Management](#)

## **23. Social value**

- 23.1 The Public Service (Social Value) Act 2012 requires the Council to consider delivering Social Value through contracts for services. However, the Council has for many years considered social, economic and environmental issues when procuring goods and services. Therefore, the Council will continue to consider social value outcomes in all contracts above the Public Contracts Regulations 2015 threshold, any exceptions to be authorised by Procurement Board through the PAD.
- 23.2. For those contracts that fall below the Public Contracts Regulations 2015 threshold, the approach should be to maximise these outcomes where possible. All contracts will include social value and any exceptions to this must be authorised by the Head of Procurement.
- 23.3. In order to ensure that the Council adheres to the Act and to the Public Contracts Regulations 2015, the social value sought from a contract must be relevant and proportionate.
- 23.4 All expenditure must be delivered in accordance with the authority's [Social Value Policy](#)
- 23.5 The table below is an extract from the Social Value Policy which describes the social value activity that should be undertaken for different level of spend.

<b>Value</b>	<b>Process</b>	<b>Potential Outcomes</b>
Under £50,000	Light touch social value <a href="#">guidance</a> included on the Corporate Procurement Service intranet pages	Innovation around one or two issues such as community volunteering or linking up with a local school. This will help small local businesses understand the issues and reward those that are already involved in their communities. Expectations will not be specific to a project but take into account what the organisation does as a whole. A suggested 5% weighting to be used on project assessment
£50,000 – Public Contract Regulations (PCR) thresholds	Category Managers will guide specifications and tender documents to ensure that Themes, Outcomes and Measures (TOMs) are included within the procurement process. It is an expectation that Social Value will apply to procurement requirements that fall within this threshold and any exceptions to this rule must be authorised by the Head of Procurement.	Businesses will be expected to respond to the range of opportunities contained within the TOM matrix. They will be assessed on their project specific proposals A 5 – 10% weighting is likely to be used on evaluation
Public Contracts Regulations 2015 thresholds and above	Category Managers will guide specifications and tender documents to ensure that considerations are made at commissioning stage and that TOMs are included within the tender process, ensuring that the evaluation scores and weightings are clearly set out and that an action plan is implemented during the contract period. Social Value must be included in tenders. Any exceptions to this rule must be authorised in the Procurement Authorisation Document (PAD) presented to Procurement Board	Businesses will be expected to respond fully to the TOMs matrix and commit to project specific deliverables that will be included in KPIs. Weightings are recommended to be set at 15 – 20% Weightings above 20% are used where contract price is set, or there is a specific opportunity around Social Value to solve a specific need. Category Managers will provide guidance on what is expected although this will not be prescribed.

## **24. Prevention of fraud and corruption**

24.1 All purchases, contracts and income covered by these rules must be let in line with the Council's [Anti-Fraud and Corruption Policy and Strategy](#)

24.2 If an officer of the Council has a pecuniary interest, in a contract or proposed contract, he/she must in accordance with Section 117 of the Local Government Act 1974 and as required by Standing Order 25 of the Council's Rules of Procedure (Standing Orders) register the interest with the Chief Executive and declare it at any meeting at which the officer is present and the contract is discussed and thereafter leave the room and take no further part in the discussion.

24.3 If an officer of the Council has a personal or non-pecuniary interest in a contract or proposed contract, he/she must declare that interest to their Director as required by the Council's Code of Conduct for Employees.

24.4 If a Member of the Council has a personal interest in a contract as defined in the Members Code of Conduct, the member must take such action as is required by that Code.

24.5 A contract must be terminated immediately, and any losses to the Council arising from the termination recovered from the contractor, if the contractor, or anyone acting on his behalf

- offers or gives or agrees to give any member or officer of the Council any gift, benefit or consideration of any kind or value as an inducement or reward with regard to the contract;
- commits any offence under the Bribery Act 2010 or section 117 of the Local Government Act 1972.

A declaration to this effect must be contained in all invitations to tender or quote.

24.6 The attention of officers is drawn to the Council's Code of Conduct, Whistleblowing policy, Disciplinary Rules and Procedures and the Code of Conduct for Employees. Non-compliance with these Rules for Contracts constitutes grounds for disciplinary action.

24.7 All of the requirements in 24.1 to 24.6 above will apply to any third party acting on the Council's behalf in a contractual situation e.g. consultants and community representatives on evaluation panels

## **25. Freedom of Information Act / Environmental Information Regulations**

- 25.1 When entering into contracts, the Council as a public authority, and any contractor it uses, must be aware of the importance of delivering services in a transparent way. The Freedom of Information Act (the Act) and the Governments Open Data agenda promote this approach and require both the proactive publication of contractual information such as the identity of contractors and contracts, values and durations. Also the reactive publication of information following requests made under the Act or Environmental Information Regulations (EIR).
- 25.2 For this reason the Council will refuse to include contractual terms that restrict the disclosure of information held by the Council and relating to the contract beyond the restrictions permitted by the Act and EIR. This means that unless an exemption provided for under the Act is applicable in relation to any particular information, the Council will be obliged to disclose that information in response to a request, regardless of the terms of any contract.
- 25.3 Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the Council will investigate the option of agreeing with the contractor a schedule of the contract that clearly identifies information which should not be disclosed. The Council will take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the Act or EIR as described in the paragraph above. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner. When entering into the above contracts the Council will make it clear that these restrictions apply to sub-contractors also and that the Secretary of State has the powers to designate them as 'public bodies' for the purpose of making them comply with the Act or EIR.
- 25.4 The Council will not agree to hold information 'in confidence' which is not in fact confidential in nature. Advice from the Lord Chancellors Department indicates that the exemption provided for only applies if information has been obtained by a public authority from another person and the disclosure of the

information to the public, otherwise than under the Act and EIR, would constitute a breach of confidence actionable by that, or any other person.

25.5 It is for the Council to disclose information pursuant to the Act and EIR, and not the non-public authority contractor. The Council will take steps to protect from disclosure by the contractor information that the authority has provided to the contractor (which would clearly be exempt from disclosure under the Act or EIR) by appropriate contractual terms. In order to avoid unnecessary secrecy, any such constraints will be drawn as narrowly as possible and according to the individual circumstances of the case. Apart from such cases, the Council will not impose terms of secrecy on contractors.

25.6 The Head of Procurement will be responsible for advising on the application of the Freedom of Information Act and Environmental Information Regulations and contracts, in conjunction with the Council's Corporate Information Governance Manager, where circumstances arise that are not specifically covered by Council policy. He/she will also be responsible for updating procedure following any case law that materially amends or augments Council policy in this area.

## **26 Data Protection Legislation [Data Protection Act 2018 and General Data Protection Regulations (GDPR)]**

26.1 'Privacy by Design' is a legal requirement when processing personal and/or 'special category' data ("personal data"). The General Data Protection Regulations (GDPR) makes it mandatory that the Council obtains contractual guarantees from all third parties that process personal data on its behalf. It also requires that the Council ensures third parties have measures in place to prevent unauthorised or unlawful processing of personal data and to prevent accidental loss, destruction or damage to any personal data they are processing on behalf of the Council. Where the Contractor is processing Personal Data (as defined by Data Protection legislation) on behalf of the Council, the Contractor shall only use the Personal Data in accordance with express instructions from and for purposes defined by the Council. Third parties must also be able to provide all relevant details that would enable the

Council to respond to Data Protection legislation requests, received from a data subject in respect of the processing of their personal data.

**27 Management of Risk in Contracts**

Risks should be identified, assessed and managed throughout the life of the contract in line with the Council's Risk Management Policy and Procedure [Risk Management Policy](#). Significant risks should be recorded, as appropriate, on our Corporate Risk Management system (JCAD Core).

**28 Safeguarding Children and Vulnerable Adults**

When spending public money, officers have a duty under the Care Act 2014 to safeguard children and vulnerable adults. CPS's standard Invitation to Tender ([ITT Part 3](#)) includes appropriate questions in section 4.11 and the Safeguarding Framework to be asked of bidders when it is possible that the service provider may come into contact with children or vulnerable adults. This template is typically used for expenditure over £50k, however officers must satisfy themselves that they have duly considered safeguarding issues when awarding contracts or placing orders under that value and that where necessary, DBS checks have been put in place by the contractor/provider. Further support and information can be accessed through the [Solihull Safeguarding Adults Board](#) and the [Solihull Safeguarding Children Partnership](#)

**29 Impact of other legislation on contracts and quotations**

In addition to what has already been mentioned in these Rules, there is other legislation that may impact on the supplies, services or works required when following a contract or quotation procedure e.g. health and safety, modern slavery etc. the Corporate Procurement Service will be able to give you advice on the impact of this legislation and the considerations you will need when drawing up specifications or identifying appropriate suppliers/providers. The authority produces an annual [Modern Slavery statement](#) which describes how this issue is being tackled by Solihull.