

# CONTRACT REGULATIONS



## 1 Introduction

These procedures are standing orders made pursuant to Section 135 of the Local Government Act 1972 relating to Contracts (the procedures are referred to as Contract Regulations) and were agreed by the Council on 23 June 2004.

Guidance regarding the use of these Contract Regulations and a further explanation as to how they operate together with general advice regarding procurement can be found in the Council's Procurement Manual or direct from the Head of Procurement. This Manual should be consulted whenever these Regulations are being considered. These Contract Regulations should also be read in conjunction with the Financial Regulations and other relevant parts of the Council's Constitution, in particular the access to information procedure rules relating to key decisions. [Schools should also refer to the Scheme for Financing Schools].

## 2 Application of these Contract Regulations

2.1 These Contract Regulations apply to any arrangement made by or on behalf of the Council [including Schools] for the carrying out of work or for the supply of goods materials or services. These include arrangements for:-

- the supply of goods
- hire, rental or lease of goods or equipment
- execution of works
- the delivery of services including those related to:-
  - the recruitment of staff
  - land and property transactions
  - financial and consultancy services
  - the employment of agency staff

2.2.1 These Contract Regulations do not apply to the following:-

- a contract for service for the employment of staff by the Council
- the engagement of Counsel
- the acquisition disposal or transfer of land or an interest in land and property
- hire of premises
- grants made by the Council

## 3. Definitions

3.1 In these Contract Regulations the words and phrases below have the meanings designated to them below.

"Award Procedure" means the procedure for awarding a contract as specified in Contract Regulations Section 10.3.

"Supplier" means any person who asks or is invited to submit a Quotation or Tender.

“Contracting Decision” means any of the following decisions:-

- withdrawal of Invitation to Tender
- whom to invite to submit a Quotation or Tender
- shortlisting
- award of contract
- any decision to terminate a contract

“EC Procedure” means the procedure required by the EC where the Total Value exceeds the EC Threshold

“EC Threshold” means the threshold at which EC public procurement directive must be applied if expected to be exceeded by the Total Value up to date guidance regarding the current thresholds and their calculations are contained in the Procurement Manual.

“Executive” means a meeting to which the Leader and all those Members that are serving as Executive Members have been invited.

“Executive Decision” means all these decisions which are the responsibility of the Executive in accordance with the Part 3 of the Council’s Constitution, including where delegated to Officers

“Executive Member/Members” means the Executive, a Committee of the Executive or an individual Member of the Executive depending upon the scheme of delegation for Executive functions determined by the Leader of the Council.

“Framework Agreements” means agreements approved in accordance with Section 14 which are contracts for specific goods and/or services which may be purchased on pre agreed terms and conditions

“Grants” means an agreement for the giving of money to a Non-Profit-Distributing Organisation or other statutory body and such payments are both:-

- a benefit to all or a section of the local community
- given for a stated purpose

“Invitation to Tender” means Invitation to Tender documents compiled in accordance with the guidance contained in the Procurement Manual

“Non-commercial considerations”

- (a) whether Contractors employ self-employed individuals
- (b) any involvement of the business activities or interests of the Contractors with irrelevant fields of Government policy
- (c) the conduct of Contractors in industrial disputes
- (d) the country of origin or location of Suppliers
- (e) any political, industrial or sectarian interests of Contractors
- (f) financial support or lack of financial support by Contractors for any institution
- (g) use or non use by Contractors of technical or professional services provided by the Authority under the Building Act 1984

“Non-Executive Decision” means those decisions which are the responsibility of the Council or Committee or Sub-Committee of the Council in accordance with the Council’s Constitution, including where delegated to Officers.

“Order” means a formal order in a form approved by the Section 151 Officer

“Procurement Manual” means the manual containing guidance on the procurement of all goods works or services and any further matters referred to in these Contract Regulations which contains guidance which shall be taken into account in accordance with these Contract Regulations

“Quotation” means a quotation of price and any other relevant matter without issue of a formal Invitation to Tender which is further defined in Section 10.3 of these Contract Regulations

“Responsible Committee” means a committee of the Council to whom certain functions have been delegated in accordance with the Council’s Constitution

“Responsible Director” means the most senior officer in a directorate of the Council, the Governing Body of a school with delegated responsibilities under Local Management of Schools Regulations or, where appropriate an officer:-

- (a) who has the appropriate skills and knowledge who has responsibility delegated to act on behalf of the Responsible Director/School Governing Body to deal with the relevant purchasing or contract in question, and
- (b) who has also clear written directions regarding the extent of his/her delegated authority

“Tender” means a Supplier’s proposal submitted in response to an Invitation to Tender

“Total Value” means the whole of the value or estimated value (in money or equivalent value) for a single purchase:-

- whether or not it comprises several lots or stages
- to be paid or received by the Council [or a discreet operational unit within the Council]

the Total Value shall be calculated as follows:-

- (a) where the purchase or contract is for a fixed period by taking the total price to be paid or which might be paid during the whole of the period including any extensions
- (b) where the purchase or contract is for an uncertain duration by multiplying the monthly payment by 48
- (c) for nominated suppliers and sub-contractors, the value of that part of the main contract to be fulfilled by the nominated supplier or sub-contractor
- (d) where an in-house service provider is competing, by taking into account redundancy and similar/associated costs

- (e) Where there is any additional benefit to the Contractor, the value of that benefit shall be estimated and added to the total price paid by the Council. Examples of this and specific advice about the calculation of the Total Value where this may be approaching the EC Threshold are given in the Procurement Manual.

“Variations” means changes to the scope or quantity of an existing contract (excluding Frameworks) that increase its Total Value.

#### **4 Basic Principles**

Purchasing procedures must:-

- achieve Best Value for public money spent
- be consistent with the highest Standards of Integrity
- ensure fairness in allocating Public Contracts
- comply with all legal requirements (including EC Directives)
- ensure that Non-Commercial Considerations do not influence any Contracting Decision
- support the Council’s Corporate and Departmental aims and policies
- comply with the Council’s guidance contained in its Procurement Manual

#### **5 Responsibilities of Responsible Director (or school Governing Body)**

5.1 The Responsible Director must comply with:-

- the Council’s Constitution and Financial Regulations
- all UK European Union binding legal requirements
- those parts of the Council’s Procurement Manual which are stated as compulsory in accordance with these Contract Regulations

5.2 The Responsible Director must:-

- keep the records required by the Procurement Manual
- ensure that all procurement procedures are conducted in accordance with these Contract Regulations and in particular that any Tender procedures are conducted in accordance with the procedures set out in the relevant Invitation to Tender
- ensure that agents, consultants and contractual partners acting on their behalf also comply with these Contract Regulations
- take all necessary legal financial and professional advice
- ensure that Contract Regulations are complied with. They are a minimum requirement

#### **6 Exemptions to Contract Regulations**

6.1 No exemption to these Regulations can be used if the EC Procedure applies otherwise exemptions to these Contract Regulations may be authorised by the Section 151 Officer or the Monitoring Officer.

- 6.2 The Responsible Director shall ensure that a copy of the appropriate report and decision relating to any exemption made to these Contract Regulations is held on the appropriate contracts file.

## **7 Guidance in the Procurement Manual**

- 7.1 The Procurement Manual contains guidance that the Responsible Director should take into consideration. In addition to this guidance the following sections in the Procurement Manual are obligatory and must be followed:-

- requirements for invitation to tender
- selection of tenderers
- receipt and opening of tenders
- post tender negotiation
- award process and Key Decisions
- record keeping requirements
- E-auctions
- EC Procurement Directives

## **8 Procurement Procedures**

- 8.1 The procedures to be applied in respect of any purchase or contract depend on its Total Value. If the Total Value does not exceed £50,000 the required procedure is a Quotation; if it exceeds £50,000 it is a Tender.
- 8.2 The Responsible Director must ensure that the appropriate procedure is followed.

## **9. Selection of Suppliers**

- 9.1 The Responsible Director shall ensure all tenderers for a relevant contract have been suitably assessed for financial standing and technical ability. Guidance is given in the Procurement Manual.
- 9.2 The Responsible Director can expect that the requirements of Section 9.1 are duly complied with if Contractors are selected from:-
- (a) Constructionline, or
  - (b) Standing lists of providers, maintained by the Council or on its behalf and compiled in accordance with the requirements in the Procurement Manual, or
  - (c) Contractors to externally-established Framework Agreements approved by the Council in accordance with Section 14.

## **10. Conducting a Procurement**

- 10.1 The Responsible Director must calculate the Total Value of the purchase or contract. If the Total Value is more than or approaches the EC Threshold then the Responsible Director must seek the advice of the Head of Procurement as to the appropriate procurement procedure.

10.2 The following procedures apply where there are no other procedures that take precedence e.g. EC Procedure If in doubt Responsible Directors must seek the advice of the Head of Procurement.

10.3 Competition Requirements

10.3.1 Where the Total Value is within the values in the first column below the following requirements must be followed:

<b>Total Value</b>	<b>Competition Requirements</b>	<b>Approval of Supplier list</b>
Up to £1,000	1 written/oral Quotation	Responsible Director
>£1,000 - £5,000	1 written Quotation	Responsible Director
> £5,000 - £50,000	3 written Quotations must be sought (based on a written specification)	Responsible Director
>£50,000 to the EC Threshold (if applicable)	Invitation to Tender by select list (compiled in accordance with Contract Regulation 9) to at least 3 and usually no more than 5 Suppliers	Responsible Director
Above EC Threshold (see Procurement Manual Section 3 for up to date thresholds)	EC Procedure or where this does not apply Invitation to Tender by select list (compiled in accordance with Contract Regulation 9) to at least 3 and usually no more than 6 Suppliers	Responsible Director in conjunction with the Head of Procurement

- Where it can be demonstrated that there are insufficient suitably qualified Suppliers to meet the competition requirements all suitably qualified Suppliers must be invited.
- Where only one suitably qualified Supplier exists then the single tender action procedure in 10.4 shall be followed.
- These competition requirements do not apply where externally-established Framework Agreements are utilised in accordance with section 14. In this instance the Responsible Director will seek the advice of the Head of Procurement upon the use of the proposed Framework Agreement and the appropriate procedure.

10.3.2 A Responsible Director must not enter into separate Contracts nor select a method of calculating the Total Value in order to avoid or minimise the application of these Contract Regulations.

10.3.3 Where the EC Procedure is required the Responsible Director shall consult the guidance on the EC procurement rules contained in the Procurement Manual and consult the Head of Procurement to determine the method of conducting the procurement.

10.4 Single tender action

10.4.1 A Responsible Director may invite a single tender or quotation without further competition if he/she:-

- uses reasonable endeavours to achieve value for money; and
- meets the justification criteria set out in Annex A; and
- has written approval in accordance with the following:-

<b>Total Value</b>	<b>Approval Procedure</b>
Up to £1,000	No special approval necessary
>£1,000 - £5,000	Responsible Director must record reasons on file
>£5,000 – £250,000	Submissions with full justification must be made using form STA 1 for approval by the Section 151 Officer or the Monitoring Officer
Above £250,000	<p>Submissions with full justification must be made in writing for approval:-</p> <p>(a) for Executive functions by the Leader of the Council or a person or persons nominated by the Leader in accordance with his/her powers of delegation detailed in part 3 of the Constitution; or</p> <p>(b) for non-Executive functions, by the Council or (if the function has been delegated to a Committee) the relevant Committee.</p> <p>In cases of urgency, single tender action may be authorised by the Director of Corporate Services and Resources or his/her authorised representative provided a subsequent report of the decision shall be submitted to the Council, the responsible Committee or the Executive (as appropriate) [for Schools urgent single tender action may be authorised by the Governing Body and reported to the Director of Education].</p>

**NB** A Responsible Director may automatically apply single tender action, without prior approval or subsequent reporting to the Executive, in respect of care packages for individually named clients or in respect of the provision of education to pupils with special educational needs where the cost per annum is under £50,000 or where the annual cost exceeds £50,000 per annum, three written quotations should be requested. In the event that there are less than three viable suppliers the Responsible Director shall obtain the maximum number of quotations reasonably practicable to obtain.

10.4.2 Single tender action may not be used in the event of a purchase or contract which is governed by the EC Procedure and is above the EC Threshold.

10.4.3 The use of approved Framework Agreements is not treated as single tender action pursuant to these regulations but is governed by the provisions of the Procurement Manual. However any order of £400,000 or greater will be subject to the Key Decision process, guidance on which is given in the Procurement Manual.

10.4.4 Where only one Consultant is considered most suitable by the Responsible Director single tender action may be applied to contracts for consultancy services up to the Total Value of £50,000 without following the procedures outlined. Contracts of over £50,000 in Total Value shall be subject to the full procedures outlined

## **11. Award Criteria**

11.1 Contracts must only be awarded on the basis of value for money for the Council. The basic criteria must be the most economically advantageous offer which will include whole life cost and appropriate quality considerations. Additional requirements regarding this are contained in the Procurement Manual.

11.2 Award criteria must not include:-

- Non-Commercial Considerations
- matters which fail to ensure fair treatment of all Suppliers;

11.3 In the event that an offer is withdrawn by a Supplier the Responsible Director may accept the next best tender offering value for money and which meets the tender acceptance criteria. In doing so he must also consider the sufficiency of the tenders remaining and the benefits, if any, of retendering.

## **12. Evidence and signing of Contract**

12.1 The formal advice of the Borough Solicitor must be sought for all of the following Contracts:-

- where the Total Value exceeds £150,000
- those involving leasing arrangements
- those which are particularly complex
- where it is proposed to use a Suppliers own terms and the cost is greater than £10k.

12.2 Unless other forms of contract have been specifically approved by the Borough Solicitor, all Contracts or Orders (excluding those involving statutory

undertakings) shall be placed on the basis of the Council's standard Conditions of Contract as follows:

- Up to £50,000 – EITHER:
  - Conditions of Contract for the Supply of Minor Goods and/or Services
  - Contract for Small Building and Associated Work
- £50,001-£150,000 - EITHER :
  - Conditions of Contract for Services
  - Conditions of Contract for Goods
  - Conditions of Contract for Consultancy
- Over £150,000
  - Consult with Borough Solicitor on the form of contract required

12.3 No amendments or additions to the Council's standard Conditions of Contract may be made without the approval of the Borough Solicitor, who should in any event be consulted in any case of doubt or where any complex or unusual contractual arrangements are proposed.

12.4 Copies of the Council's standard Conditions of Contract and other approved forms are appended at Annex B.

12.5 All Contracts (excluding petty cash or equivalent purchases) shall be completed as follows (subject to delegated financial limits):-

<b>Total Value</b>	<b>Method of Completion</b>	<b>Signed By</b>
Up to and including £1,000	Oral or written Order	Responsible Director
£1,001 - £50,000	Written Order or signed contract	Responsible Director
£50,001 - £150,000	Signed contract	Responsible Director
£150,001 - £250,000	As advised by the Borough Solicitor	Responsible Director or in accordance with the requirements for sealing of contracts
Over £250,001	Deed executed under seal	Borough Solicitor and Mayor

12.7 All Contracts must be concluded before the supply service or construction work begins except in exceptional circumstances and then only with the written consent of the Responsible Director.

12.8 If goods or services are being acquired at no direct cost to the Council advice must be sought from the Borough Solicitor.

12.9 Where Contracts are required to be completed by seal in accordance with the above regulations then Contracts shall be sealed on behalf of the Council with the fixing of the Council's seal and the signature of the Borough Solicitor and the Mayor by way of witness to the fixing of the seal.

### **13. Declaration of interest and anti-corruption**

13.1 The Council has a Fraud and Corruption Policy which applies to the conduct of all procurement and the award of contracts pursuant to these Contract Regulations.

13.2 Officers and Members of the Council must also ensure that they follow the Council's appropriate codes of conduct for the declaration of any interests they may have in any contract.

### **14. Framework Agreements**

14.1 Framework Agreements are standing arrangements, term or call-off contracts established to facilitate an easy repeat ordering of goods and services over several years. They may be established by the Council itself or by other public bodies for more widespread use. The following externally-established Framework Agreements are currently approved for use by the Council:-

- all Office of Government Commerce (OGC) Buying Solutions contracts (including GCat and SCat)
- all central buying consortium (CBC) contracts
- DCSA framework agreements for the supply of photocopiers
- Environment Agency Framework Agreement for the supply of Estate cars and Vans

The list of approved Framework Agreements will be held by the Head of Procurement who will advise on their use. Amendments or additions to the list may only be made with the approval of the Head of Procurement in consultation with the Borough Solicitor.

### **15. Post-Contract Award Matters**

#### **15.1 Monitoring**

Advice is contained in the Procurement Manual regarding post-contract monitoring and evaluation. The Responsible Director shall ensure that all contracts are, where required to do so by the Procurement Manual, monitored in respect of:-

- performance
- compliance with specification and contract
- cost
- any Best Value requirements
- user satisfaction and risk management.

#### **15.2 Contract Variation**

15.2.1 Variations in the Total Value of a contract post award are subject to the following approvals:-

<b>Amount by which the estimated Total Value is exceeded</b>	<b>Approval Process</b>
Less than £25,000 or 10% whichever is the higher - provided within approved budget	Written consent of Responsible Director
>£25,000 or 10% or not within overall approved budget	The Executive Member(s), Responsible Committee or school Governing Body

15.2.2. Extensions to the duration of a contract, provision for which has not been included in the original contract term, shall be subject to the following approvals:-

<b>Position/Contractual situation</b>	<b>Approval Process</b>
Contract provides for extension	Written approval of Responsible Director
Extension up to 6 months	Written approval of Responsible Director
Extension over 6 months	<ul style="list-style-type: none"> <li>• Contract &gt;£50k - Executive or Responsible Committee or school Governing Body</li> <li>• Contract &lt;£50k – Responsible Director or school Governing Body</li> </ul>
Any subsequent extension	Executive, Responsible Committee or school Governing Body

15.2.3 No approvals may be given where this would lead to non compliance with EC Procedure.

## **ANNEX A: CIRCUMSTANCES JUSTIFYING SINGLE TENDER ACTION**

(see paragraph 10.4.1)

Where only one Supplier is considered to be suitable by the Responsible Director for any of the following reasons:-

- where the Contract can only be performed by one contractor
- where there is genuine urgency in the sense of time constraints for the letting of the Contract
- where the proposed Supplier is already on site and there is a financial benefit in negotiating an extension for further work
- where demonstrable benefits in service or value for money or price are likely to be obtainable by way of direct negotiation with a potential supplier
- where a scheme is wholly externally funded and the funding is dependant on a specific contractor being used
- other comparable circumstances

## **ANNEX B: STANDARD CONDITIONS OF CONTRACT**

(see paragraph 12.2)

1. The following forms of contract are approved for use by the Council: by the Borough Solicitor.
  - JCT all forms
  - ICE all forms
  - PPC2000 – ACA Standard Form for Partnering
  
2. The Council's standard Contract Conditions are as follows: (section 6.1 of these regulations requires these conditions to be used in the circumstances described in that section)
  - Conditions of Contract for the Supply of Minor Goods and/or Services
  - Contract for Small Building and Associated Works
  - Conditions of Contract for Services
  - Conditions of Contract for Goods
  - Conditions of Contract for Consultancy
  - Conditions of Contract for Works Consultancy

The latest versions of these documents are available from the Legal or Procurement pages of the Intranet or the procurement pages of the Council's website.

## ANNEX C – SUMMARY OF COMPETITION REQUIREMENTS AND APPROVAL REGIME

	Up to £500	>£500 - £1,000	>£1,000 - £5,000	>£5,000 - £50,000	>£50,000 - £150,000	>£150,000 - £250,000	>£250,000 - £400,000	>£400,000
Competition requirements	1 written or oral quotation		1 written quotation	3 written quotations	3-5 tenders	3-6 tenders in accordance with EC procedure where this applies		
Approve tender list	Responsible Director					Responsible Director after seeking advice from Head of Procurement		
Single Tender approval	No special approval necessary	Responsible Director to record reasons on file	Section 151 Officer or Monitoring Officer using Form STA1			Executive function - Leader or Leader's nominee  Non Exec function - Council		
Approve contract award							Executive under Key Decision procedure	
Sign contract/Order	Responsible Director				Responsible Director or under seal, as advised by Borough Solicitor		Borough Solicitor and Mayor (under seal)	