

Proposed New Contract Procedure Rules: Revised Version

Proposed Changes are Underlined

Tendering - Exceptions

16.46 In the case of the circumstances below, procurement may be deemed to be an exception if proposed by the service Director and approved by the Procurement Review Board (PRB). The relevant paragraph should be quoted when seeking the approval.

(a) Contracts valued at less than £50,000 for non-Schedule 3 services and £589,148 for those included in Schedule 3 of the Public Contract Regulations (2015).

(b) Contracts formalising the grant funding of voluntary sector bodies, where the purpose of the contract is to establish the general conditions of grants by the Council.

(c) For the extension, addition to or maintenance of existing buildings, works, plant or equipment where this can only be done satisfactorily by the original contractor/supplier.

(d) When carrying out security works where the publication of documents in the tendering process could prejudice the security of the work to be done.

(e) Where the contract is on behalf of another local authority for which the Council is acting as agent and is so instructed in writing by the principal.

(f) For the supply of goods required in respect of a contract from another local authority.

(g) For the performance of work or provision of services where effective competition is prevented by the specialist nature of the work.

(h) Where goods and services are to be procured by another Local Authority or public body which is acting on behalf of the Council provided the Assistant Director (Procurement and Commercial Services) has confirmed that the procurement is in line with the Public Contracts Regulations (2015) if applicable.

(j) In accordance with Regulation 32(2)(c) of the Public Contracts Regulations (2015), insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with, and Regulation 32(4) which states that the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority.

(k) Where the Procurement Review Board agree that selective or competitive Tendering, or use of electronic tendering, is not appropriate, and the procurement remains compliant with the Public Contract Regulations (2015)

16.47 Approval of exceptions by PRB is not required in the following circumstances

(a) Authorisations for call-off from internally managed Frameworks and Dynamic Purchasing Systems, where approval of their use of has been agreed by PRB, and their use is in accordance with the defined call off arrangements and Rules 16.58 – 16.64 within this document.

(b) Where urgent steps are necessary for the protection of life, property or to comply with statutory requirements subject to the Chief Executive and Head of Legal Services approval.

(c) Before a contract is to be completed at auction the limit of authority of the person bidding has been approved in advance.

(d) When buying land and buildings and interests in land and buildings (Contracts for the sale of land must be disposed of by competitive tender or auction except where the Section 151 Officer and the Head of Legal Services consider that a negotiated agreement will add value to the Council and this is documented and approved by the Cabinet). Officers need to be aware that certain transactions involving the buying of land and buildings may also constitute contracts for works or services subject to the Public Contract Regulations (2015) if such elements are part of the contractual arrangements. Advice should be sought from the Head of Legal Services in such circumstances.

(e) The engagement of barristers or expert witnesses within or in the contemplation of legal proceedings;

(f) The engagement of designated artists, performers, productions for public entertainment purposes or items of art for public display;

16.48 The Procurement Review Board consists of the Section 151 Officer, the Head of Legal Services and the Assistant Director (Procurement and Commercial Services).

Consortium Contracts, Framework Agreements and Dynamic Purchasing Systems

16.58 A Framework Agreement is a form of Contract that provides one or more authorities with the opportunity to procure goods, works or services from one or more suppliers either by a call-off procedure or by mini-tender.

16.59 It will operate for a prescribed term with defined terms and conditions for its use. The Framework Agreement must name the owning and joining authorities as well as the selected suppliers. Joining authorities will be required to sign an

Access Agreement prior to use of the Framework.

16.60 An officer responsible for the procurement exercise may use Framework agreements, subject to the following conditions and must seek advice from corporate procurement in advance

- the Council is legally entitled to use the Framework agreement;
- the purchases to be made fall properly within the scope of the framework;
- The establishment and operation of the framework agreement is in compliance with the Public Contract Regulations (2015) (where they apply) and meets the Council's
- own requirements.

16.61 A "framework agreement" may include:

- Contractor prequalification lists/select lists;
- Framework arrangements (including those set up by the Government Procurement Service);
- Purchasing arrangements set up by central purchasing bodies and commercial organisations;
- Consortium purchasing;
- Collaborative working arrangements;
- Formal agency arrangements;
- E-procurement / purchasing schemes and methods;
- Other similar arrangements.

16.64 Dynamic Purchasing Systems are electronic systems open to an unlimited number of suppliers who meet the qualifying criteria, and can be divided into lots for different services. Operation of the System must be in accordance with Regulation 34 of the Public Contract Regulations (2015) which requires competitive call off from the DPS for individual services or Frameworks. In the case of services listed in Schedule 3 of the Public Contract Regulations call offs may be run under the Light Touch Regime set out in Rule 16.65 below.

16.65 Use of Framework agreements and Dynamic Purchasing Systems must be approved in advance by the Procurement Review Board. Call off from an internally managed Framework or tendering from a Dynamic Purchasing System does not require further PRB approval, subject to the requirements of Rule 16.47a. The £250,000 threshold for reporting to Cabinet still applies.

Social & Health Care and Children's Care (and other Schedule 3 Services)

16.65 Services falling under Schedule 3 of the Public Contract Regulations (2015) are subject to a Light Touch Regime if the value of the contract exceeds £589,148. This means that there is no requirement to follow the standard procurement routes set out in the full Regulations. Light Touch Procurement must, however, follow Regulations 74 to 76, which require that the procurement procedure used shall be "at least sufficient to ensure compliance with the principles of transparency and equal treatment of economic operators". Procurement under the Light Touch Regime must

be approved by PRB if it is not a call-off from an internally managed Dynamic Purchasing System.

16.66 The relevant Director has the responsibility of monitoring spend against values set within the terms and conditions of the contracts, Dynamic Purchasing Systems, and Framework Agreements as applicable

16.67 The relevant Director has the responsibility for monitoring and addressing deviation or out of line situations specifically where the risk is of exceeding PCR thresholds.

B. Contract Procedure Rules (Original Unamended Version)

Tendering - Exemptions

16.46 The following contracts need not be tendered unless required to do so under the: European Union and United Kingdom public procurement legislation, however an exemption from tendering will need to be sought from the Procurement Review Board quoting the relevant exemption below:

- (a) Contracts valued at less than £50,000 which must follow procedures for quotes set out in these Rules above.
- (b) Contracts formalising the grant funding of voluntary sector bodies, where the purpose of the contract is to establish the general conditions of grants by the Council.
- (c) Contracts for the engagement of Barristers.
- (d) For the extension, addition to or maintenance of existing buildings, works, plant or equipment where this can only be done satisfactorily by the original contractor/supplier.
- (e) When carrying out security works where the publication of documents in the tendering process could prejudice the security of the work to be done.
- (f) When buying land and buildings and interests in land and buildings (Contracts for the sale of land must be disposed of by competitive tender or auction except where the Section 151 Officer and the Head of Legal Services consider that a negotiated agreement will add value to the Council and this is documented and approved by the Cabinet). Officers need to be aware that certain transactions involving the buying of land and buildings may also constitute contracts for works or services subject to EU Rules if such elements are part of the contractual arrangements. Advice should be sought from the Head of Legal Services in such circumstances.
- (g) Where the contract is on behalf of another local authority for which the Council is acting as agent and is so instructed in writing by the principal.
- (h) For the supply of goods required in respect of a contract from another local authority.
- (i) Before the contract is to be completed at auction the limit of authority of the person bidding has been approved in advance.
- (j) Where urgent steps are necessary for the protection of life, property or to comply with statutory requirements subject to the Chief Executive and Head of Legal Services approval.

(k) For the performance of work or provision of services where effective competition is prevented by the specialist nature of the work subject to written approval from the Strategic Director followed by a business case to be submitted to the Procurement Review Board for approval.

(l) Where the goods or services are to be procured through a consortium or a procurement organisation which has been approved by the Head of Legal Services e.g. Crown Commercial Services (CCS). Approval to use a framework agreement should be sought from the Procurement Review Board to ensure robust procurement processes.

(m) Where goods and services are to be procured by another Local Authority or public body which is acting on behalf of the Council provided the Assistant Director (Commissioning & Procurement) has confirmed that the procurement is in line with public procurement regulations if applicable.

(n) Where the Procurement Review Board agree that selective or competitive tendering is not appropriate or that an exemption from tendering is required.

The Procurement Review Board consists of the Section 151 Officer, the Head of Legal Services and the Assistant Director Contracts, Commissioning and Procurement.

16.47 An “exemption business case” must be completed for every instance where a Strategic Director approves an exemption from these rules. The form must adequately document the reasons for the exception and an electronic copy must be retained by the service concerned. Exemption Business Cases must be submitted to the Procurement Review Board for consideration. The Procurement Review Board has the overall decision to approve or reject a business case. A record of all exceptions is maintained by Corporate Procurement.

Consortium contracts & Framework Agreements

16.58 A Framework Agreement is a form of Contract that provides one or more authorities with the opportunity to procure goods, works or services from one or more suppliers either by a call-off procedure or by mini-tender.

16.59 It will operate for a prescribed term with defined terms and conditions for its use. The Framework Agreement must name the owning and joining authorities as well as the selected suppliers. Joining authorities will be required to sign an Access Agreement prior to use of the Framework.

16.60 An officer responsible for the procurement exercise may use Framework agreements, subject to the following conditions and must seek advice from corporate procurement in advance

- the Council is legally entitled to use the Framework agreement;
- the purchases to be made fall properly within the scope of the framework;

- The establishment and operation of the framework agreement is in
- compliance with the EU Rules (where they apply) and meets the Council's
- own requirements.

16.61 A "framework agreement " may include:

- Contractor prequalification lists/select lists;
- Framework arrangements (including those set up by the Government Procurement Service);
- Purchasing arrangements set up by central purchasing bodies and commercial organisations;
- Consortium purchasing;
- Collaborative working arrangements;
- Formal agency arrangements;
- E-procurement / purchasing schemes and methods;
- Other similar arrangements.

16.62 Where a framework agreement or a consortium contract is used then there shall be a whole or partial exemption from the obligations under these Contract Procedure Rules in respect of the choice and conduct of procedures. Guidance in the Procurement Operating Procedure and advice from corporate procurement should be sought from prior to entering to such arrangements.

16.63 Use of framework agreements must be approved in advance by the Procurement Review Board.

Social & Health Care and Children's Care

16.64 With the prospective withdrawal of Part A & Part B services within the EU regulations and the introduction of a "light touch regime" a threshold of EUR 750,000 – GBP £591,290 will apply and all social & Health care contracts, including children's services are subject to complying with the Public Contracts Regulations 2006 – amended 2009.

16.65 Where the council accesses a framework agreement under which spot purchases are made, the authorised officer should follow rule 15 – Consortium contracts and framework agreements.

16.66 The Strategic Director for Wellbeing has the responsibility of monitoring spend against values set within the terms and conditions of the contracts and framework agreements as applicable.

16.67 The Strategic Director for Wellbeing has the responsibility for monitoring and addressing deviation or out of line situations specifically where the risk is of exceeding EU thresholds.

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Appendix 1(C)

Schedule 3 of the Public Contracts Regulations 2015

SOCIAL AND OTHER SPECIFIC SERVICES

CPV Code	Description
75200000-8; 75231200-6; 75231240-8; 79611000-0; 79622000-0 (Supply services of domestic help personnel); 79624000-4 (Supply services of nursing personnel) and 79625000-1 (Supply services of medical personnel) from 85000000-9 to 85323000-9; 98133100-5, 98133000-4; 98200000-5; 98500000-8 (Private households with employed persons) and 98513000-2 to 98514000-9 (Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households, Home-help services and Domestic services)	Health, social and related services
85321000-5 and 85322000-2, 75000000-6 (Administration, defence and social security services), 75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80000000-4 Education and training services to 80660000-8; from 92000000-1 to 92700000-8; 79950000-8 (Exhibition, fair and congress organisation services), 79951000-5 (Seminar organisation services), 79952000-2 (Event services), 79952100-3 (Cultural event organisation services), 79953000-9 (Festival organisation services), 79954000-6 (Party organisation services), 79955000-3 (Fashion shows organisation services), 79956000-0 (Fair and exhibition organisation services)	Administrative social, educational, healthcare and cultural services
75300000-9	Compulsory social security services
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1	Benefit services
98000000-3; 98120000-0; 98132000-7; 98133110-8 and 98130000-3	Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services
98131000-0	Religious services
55100000-1 to 55410000-7; 55521000-8 to 55521200-0 (55521000-8 Catering services for private households, 55521100-9 Meals-on-wheels services, 55521200-0 Meal delivery service) 55520000-1 Catering services, 55522000-5 Catering services for transport enterprises, 55523000-2 Catering services for other enterprises or other institutions, 55524000-9 School catering services	Hotel and restaurant services

CPV Code	Description
55510000-8 Canteen services, 55511000-5 Canteen and other restricted-clientele cafeteria services, 55512000-2 Canteen management services, 55523100-3 School-meal services	
79100000-5 to 79140000-7; 75231100-5;	Legal services, to the extent not excluded by regulation 10(1)(d)
75100000-7 to 75120000-3; 75123000-4; 75125000-8 to 75131000-3	Other administrative services and government services
75200000-8 to 75231000-4	Provision of services to the community
75231210-9 to 75231230-5; 75240000-0 to 75252000-7; 794300000-7; 98113100-9	Prison related services, public security and rescue services to the extent not excluded by regulation 10(1)(h)
79700000-1 to 79721000-4 (Investigation and security services, Security services, Alarm-monitoring services, Guard services, Surveillance services, Tracing system services, Absconder-tracing services, Patrol services, Identification badge release services, Investigation services and Detective agency services) 79722000-1(Graphology services), 79723000-8 (Waste analysis services)	Investigation and security services
98900000-2 (Services provided by extra-territorial organisations and bodies) and 98910000-5 (Services specific to international organisations and bodies)	International services
64000000-6 (Postal and telecommunications services), 64100000-7 (Post and courier services), 64110000-0 (Postal services), 64111000-7 (Postal services related to newspapers and periodicals), 64112000-4 (Postal services related to letters), 64113000-1 (Postal services related to parcels), 64114000-8 (Post office counter services), 64115000-5 (Mailbox rental), 64116000-2 (Post-restante services), 64122000-7 (Internal office mail and messenger services)	Postal services
50116510-9 (Tyre-remoulding services), 71550000-8 (Blacksmith services)	Miscellaneous services