

PART 4.10

CONTRACT PROCEDURE RULES

# **PROCUREMENT**

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CHELMSFORD CITY COUNCIL

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#### 4.10.1 Introduction, Scope and Principles

These Contract Procedure Rules are made under the provisions of section 135 of the Local Government Act 1972 and govern the making of contracts for and on behalf of the Council.

The purpose of these Rules is to provide clear guidance for the processes that result in the award of a contract for:

- Goods
- Services
- Works
- Concessions
- Public Sector to Public Sector Trading

These Rules look at the various methods and procurement routes the Council can employ in order to reach contract award. They are:

- Procurement Card
- Quotation
- Tender
- External/Internal Framework Agreement
- External/Internal DPS (Dynamic Purchasing System)
- eAuction

The Rules are intended to promote good purchasing practice, value for money, public accountability and deter bribery and corruption. They aim to ensure:

- True and fair competition for contracts
- Clear and auditable procedures
- Accountable and compliant process
- The Council to use its purchasing power for the benefit of the local economy, environment and community under its jurisdiction.

The provisions contained in these Rules are subject to the statutory requirements of both the European Union and United Kingdom Government. The letting and content of contracts shall conform to all statutory requirements relating to contracts and procurement.

#### 4.10.2 Definitions

Lead Procurement Officer	Procurement Services Officer leading on the procurement process
Council	Chelmsford City Council
Directors	Service Directors are responsible for ensuring that officers within that directorate comply with the Contract Rules, Financial Rules and the Regulations*
Procurement Services Manager	Shall ensure that Council procurement is carried out with due diligence and in the spirit of true, fair and transparent competition, and that the Council meets its all its obligations under the Regulations* <i>Please see Procurement Manual for specific tasks.</i>
Local Government Transparency Code	Requirements for local government to publish open data on spend of £500 and above
Regulations*	The 'EU Procurement Rules' comprising: <ul style="list-style-type: none"> <li>• The Public Contracts Regulations 2015 (as amended) and/or Concession Contracts Regulations 2016 (as applicable) as supplemented by EU Directives on the procurement of Goods, Works, Services and Concessions.</li> <li>• The Council's Financial Rules</li> <li>• Public Services (Social Value) Act 2012</li> <li>• EU Exit Regulations 2019</li> </ul>
Legal Team	The Council's internal legal team OR external counsel
Service Managers	Contract management responsibilities, and responsible for all service budget spend to be made in line with these rules.
Goods	Supplies or materials
OJEU	Office Journal of the European Union
Threshold	The level of spend that dictates the rules or regulations that apply to a procurement
Contract	Any form of contract, agreement for the supply of Goods, Works and/or, Services that the Council enters
Contractor	Any person, partnership, company or any other organisation which provides or offers Goods, Works and/or Services to the Council
Dynamic Purchasing System (DPS)	A long running, completely electronic procurement tool used for commonly available works, services and goods. Qualifying contractors can join at any time and participate in mini competitions for contracts.
Framework Agreement	An agreement, with one or more contractor, that establishes the standard terms and conditions of supply over a fixed period of time with no pre-set volume information. <ul style="list-style-type: none"> <li>• Internal – setup by the Council for use by us and other specified public bodies</li> <li>• External – setup by another public body and accessible by the Council</li> </ul>
LTR	Light Touch Regime – relates to procurements that are generally of low interest to cross border competition e.g. social, health and education services

The Procurement Manual	This document is a Practice Note for day to day use by Council staff. The manual provides detailed guidance on procurement processes pursuant to the Public Contracts Regulations 2015, the Council's internal rules and its responsibilities and duties therein. The Manual should be referred to for all technical aspects of a procurement and further advice can be provided by Procurement Team.
The Procurement Strategy	This document details the aims and objectives of the Council's procurement activities including the social, environmental and economic impact of these activities.

### 4.10.3 Key Considerations

Before commencing any procurement using public money, officers must understand the following:

1. The contract value - this dictates which procurement routes can be used.
2. Strategic nature and public interest in the procurement -this influences which of the allowable routes is most appropriate.

#### *a. Estimating Contract Value*

The value of a contract is the total amount the Council expects to pay (or receive), net of VAT, over the length of the agreement, including any extension period or stated add-ons such as maintenance and support costs.

If the contract is for an uncertain or unfixed term, the value is the amount the Council expects to pay (or receive) over four years. This could be, for example, the monthly value multiplied by 48. If the contract is broken into lots, all lots must be factored into the total.

For Internal Framework Agreements / DPS, the value should be based on the level of anticipated spend from all parties with access.

#### *b. Aggregation/Disaggregation*

The Council is required to aggregate need whenever it is possible to do so. Aggregation groups together demand for commonly purchased goods and services to harness greater economies of scale and seek better value for money. Aggregation results in a single contract to manage as opposed to several smaller contracts.

Disaggregation, an offence under the Regulations, is the reverse; dividing up similar requirements into smaller contracts to remain below the relevant procurement threshold.

#### *c. Procurement Thresholds*

##### *i. External Thresholds*

The Regulations require a full tender process to be undertaken when the value of the contract exceeds a set level. The tender has to be advertised in OJEU and follow guidelines provided in the Regulations. These thresholds are set by the EU and reviewed every two years. There is threshold for each category of spend.

Category	Threshold (2018-19)	Example
Works	£4,733,252	Constructions, repairs, maintenance
Goods / supplies	£189,330	Stationery
Services	£189,330	Cleaning

<b>Concessions</b>	£4,733,252	Bailiffs, catering
<b>Light Touch Regime</b>	£633,540	Education e.g. Apprenticeships
<b>Land Lease &amp; Property</b>	Neither the procurement rules stated here, or the Procurement Regulations apply to contracts of this type	

## ii. Internal Thresholds

Below the EU thresholds the Council has set its own spend limits. These limits provide guidelines for the method of procurement that should be used, and the associated authority needed to undertake it. The table below provides a broad outline with further detail provided in the Procurement Manual.

<b>Threshold</b>	<b>Sub-threshold</b>	<b>Notes</b>	<b>Level of Authority Required</b>
Up to £50,000	Up to £1,000  £1,001 to £25,000  £25,001 to £50,000	Please see the Procurement Manual for more detailed guidance	Service Manager
£50,001 to £189,330		Procurement team involvement is required Route to Market Assessment to be carried out	Senior Officer/ Service Manager and Procurement Manager
Spend over £189,330 <i>Goods &amp; Services</i>		Falls under the Regulations, a full tender process is required Procurement team involvement is mandatory to ensure compliance with Regulations Route to Market Assessment to be carried out	Director and Procurement Manager
Spend over £100,000	Executive Decision may be required Procurement team involvement required Director sign off may be required for strategic purchases as determined by Procurement & Risk Services Manager		
Spend over £200,000	Key Decision. Please see the relevant Constitutional practice notes		

***e. Strategic / Public Interest Considerations***

Regardless of the contract value, Service Managers must consider the likely impact of the procurement on internal and external stakeholders. If the proposed activity is of a contentious nature, (perceived or actual) high risk, or relating to matters that affect public sensitivities, then advice should be taken from Procurement Team.



#### **4.10.4 General Notes – Apply to all Procurement Procedures**

##### ***a. eProcurement***

eProcurement is a requirement under the Regulations; all communication with potential contractors must be in electronic format. eProcurement provides a comprehensive and complete audit trail, enabling the Council to meet its accountability and compliance obligations.

Officers must remain mindful of commercial confidentiality and Data Protection legislation in all dealings with suppliers and external bodies.

##### ***b. Procurement Documentation & Retention Thereof***

The Procurement Team will work with Services to produce ITTs (Invitations to Tender) and RFPs (Requests for Proposals) for procurements above the EU threshold and of strategic importance.

OJEU procedures require a specific set of documents to be published as part of the tender pack.

The Legal Services Team will provide appropriate support and guidance as and when required in conjunction with Procurement Team.

Detailed document requirements are provided in the Procurement Manual and are in line with the Council's Document Retention Policy.

##### ***c. Responsible Procurement***

The Council is required to consider how a procurement project might improve the economic, social and environmental wellbeing across its area.

These outcomes are fully defined in the Procurement Strategy; please consult the Procurement Team for more information.

Procurements that may result in pollution, waste management issues, high energy use or have any other notable environmental impact should have relevant mitigating requirements built into the specification. Evaluation and scoring schemes should contain criteria that enable Council staff to fully consider and score these elements in each submission.

##### ***d. Terms and Conditions of Contract***

The Regulations must be adhered to when undertaking a procurement above the OJEU threshold.

All agreements must be in written English, price must be stated in British currency and subject to the jurisdiction of English Law.

British standards must be used where they are applicable to the subject of a contract.

Where the Procurement Team has undertaken a process on behalf of a Service Manager, the Lead Procurement Officer will take responsibility for instructing the Legal Team to prepare or approve the

terms and conditions of a contract if required. This applies whether the contract: was created by the Council; is based on the supplier's terms and conditions; or forms the basis of a call off agreement.

#### ***e. In-house Services***

Where the Council has an in-house service, external companies must not be used for these services unless the Service Manager responsible for the in-house service confirms specifically that they are unable to meet the requirements on that occasion.

#### ***f. Public to Public Trading***

If the Service Manager is considering entering into a contract with another public body, early advice must be sought from the Procurement Team. It should not be assumed that arrangements entered between the Council and other public bodies are outside the scope of the Regulations.

#### ***g. Contract Award / Value for Money***

The Council operates under the 'Duty of Best Value' which requires overall value, including economic, environmental and social value, to be considered when reviewing any service provision.

Social Value is a statutory duty of the Council for services over the OJEU threshold, however, these principles should be applied to all the Council's procurement activity. Social value considerations should be built in at the pre-procurement stage; consulting with local third sector representatives as and when deemed appropriate.

The Regulations require the Council to award public contracts on the basis of MEAT (Most Economically Advantageous Tender). This is not 'cheapest wins' but looks at cost alongside qualitative, environmental and social criteria. The balance of award criteria will be considered, on this basis, on a procurement by procurement basis.

Due Diligence checks are undertaken to review performance, reputation and financial stability of prospective suppliers, and can be part of the award criteria or used as a pass/fail criterion.

#### 4.10.5 Procurement Activity

##### *a. Contracts up to £25,000*

The Service Manager is responsible for these procurements, but may access Procurement Team support as required. Quotations, frameworks and DPS are all possible procurement options.

If the procurement is strategic in nature, high risk, impacts on other services or has wider implications across the Council and/or the provision of its services, apply the guidance under section c.

##### *b. Contract Value of between £25,000 - £50,000*

If the procurement is for non-critical, non-strategic goods, services or works the minimum requirement is for three quotations known as Request For Quotations (RFQs)

Frameworks, DPS can be used.

If the procurement is strategic in nature, high risk, impacts on other services or has wider implications across the Council and/or its service provision, apply the guidance under section C below.

##### *c. Contract Value above £50,000 (and any strategic procurement) but below EU threshold*

Prior to undertaking any type of procurement exercise, the service must engage with the Procurement Team to seek advice on the best and most appropriate process to meet the identified need. This will result in a Route to Market Assessment being prepared.

For strategic level contracts a Business Case may also be required. This could involve all, or some, of the following actions/plans:

1. Needs assessment
2. Route to market assessment
3. Plan for stakeholder engagement
4. Market assessment
5. Risk assessment
6. Financial implications assessment
7. Social value assessment
8. Environmental and Ecological Impact assessment

The Business Case must be signed off by the Service Manager and Procurement Services Manager

The Procurement Manual provides detailed guidance regarding these topics as well as proforma documents.

Framework and DPS options will be investigated as part of the Route to Market Assessment.

If the expected contract value is below the EU threshold by 10% or less please speak to the Procurement Team before taking any further action.

***d. Contract Value above EU Threshold***

A full OJEU tender process is required. This process must only be undertaken with the full involvement of the Procurement Team.

Please be aware that a full OJEU process takes around 12 weeks to complete. Please ensure you advise the Procurement Team of your plans in a timely manner to enable a schedule to be put in place.

Framework and DPS options will be investigated as part of the Route to Market Assessment which will require approval by the Procurement Services Manager and Management Team.

***e. Executive Decision / Key Decision***

An Executive Decision is taken by the Leader, the Cabinet or delegated to a committee of the Cabinet, a Cabinet member or an officer, and is publicly notifiable 28 days prior to being taken. A key decision has expenditure of above £200k or 20% or more of relevant expenditure. Full details see Part 2 Articles of the Constitution. Please refer to the Council's Monitoring Officer for how this may impact on your procurement.

#### **4.10.6 Frameworks, DPS, eAuctions**

##### ***a. External Agreements***

The Council is eligible to use a wide range of Frameworks and DPS created by other public sector bodies. The Procurement Lead must ensure that the Council is lawfully able to use the Framework or DPS; the Procurement Team can provide advice and assistance on use. They must also establish that there is a clear benefit to the Council of using a Framework or DPS over other procurement options.

For procurements exceeding £100k or those of a particularly strategic nature, a Route to Market Assessment must be undertaken.

The Framework or DPS rules must be adhered to at all times.

Where the use of a Framework/DPS is subject to signing an Access Agreement, this document should be authorised by the Procurement Services Manager.

The Procurement Team must be advised of any contracts entered into via a Framework Agreement, regardless of value.

##### ***b. Internal Agreements***

The Council can create its own Framework, DPS or eAuction, using its eProcurement software where it is in the Council's best interests to do so.

Use of the Framework/DPS will be mandatory across the Council for all goods, services and works that have been included in the scope of the arrangements.

Should the supply be of a significantly higher than normal value, the Procurement Manager should be consulted to establish if new rates should be sought, or an alternative procurement method used.

Frameworks can only be created with the agreement of the Procurement Manager.

##### ***c. Compliance Register***

A compliance register entry can be used in some specific circumstances to waive the requirements of the Contract Procedure Rules. Full details of the specific circumstances are set out in the Procurement Manual. The compliance register waiver cannot be used for Procurements above the EU Thresholds.

##### ***d. Value Engineering & Negotiation***

The Public Contract Regulations 2015 (PCRs) allow, in some circumstances, a tender process to be switched to a negotiated procedure. Please see the Procurement Manual for detail of a negotiated procedure. This can only be used where the nature of the original competition is not substantially altered and does not artificially restrict competition.

#### 4.10.7 Contracts

##### ***a. Review and Monitoring***

During contract preparation the Service Manager should appoint a Contract Manager (who may be mentioned in the contract itself) to monitor the Supplier's performance.

Further guidance regarding the management of contracts is covered in the Procurement Manual.

Details of the contract shall be stored centrally. The Procurement Team will maintain this information for key contracts

##### ***b. Reg 84, Contracts Finder, OJEU Award Notices***

The Procurement Team will produce and publish information regarding contract award on all platforms required by the Regulations. In addition, the team will provide a post procurement report, if required by the Regulations or, by the service if not required by the regulations or if high risk procurement.

##### ***c. Contract Variation, Modification or Termination***

During the term of a contract modifications may be proposed, which, if adopted, would result in additional works, goods or services. There are significant limitations upon the Council's ability to make such modifications, especially when the Regulations apply. There are tolerances allowed within contract variations under Reg 72.

Before discussing any variation or modification with the Supplier, the Service Manager must seek advice from the Procurement and Legal Teams.

##### ***d. Extensions***

If an extension period is clearly stated in the contract, the option is available to extend. Before exercising a contractual right to extend the Service/Contract Manager must consider whether it is in the best interests of the Council to continue with the contract by examining performance to date and any changes in cost both under the terms of the contract and also in the wider market. variations.

Any extension will require the agreement of both parties. Please contact the Procurement Services Manager for further advice.