

# PROCUREMENT RULES

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## **A. PRINCIPLES AND SCOPE OF PROCUREMENT RULES**

### **A1 PRINCIPLES**

A1.1 The principles underpinning these Procurement Rules are:

- (a) the need to ensure that value for money and propriety are present in Council's procurement and the award of contracts;
- (b) the need to maintain fairness, transparency, equality and integrity in the Council's procurement activity;
- (c) the need to comply with applicable legal requirements and the Council's own Financial Rules
- (d) the need to undertake procurement in accordance with the Council's Procurement Strategy and Procurement Policy

A1.2 Every procurement process and contract must be designed to achieve best value for the Council, as defined in the glossary of terms which forms Appendix 1 to these Procurement Rules.

A1.3 Electronic methods of procurement must be used wherever possible, consistent with the above principles.

### **A2. SCOPE**

A2.1 These Procurement Rules are part of the Council's Constitution and must be complied with, in conjunction with the Council's Financial Procedure Rules. They take precedence over the delegated powers of Members and officers. **Non-compliance may result in disciplinary action.**

A2.2 These Procurement Rules apply to all procurement undertaken by or on behalf of Malvern Hills District Council for works, services (including consultancy) or supplies, unless to do so would be to the Council's disadvantage (such as where the Council enters into a joint procurement arrangement led by another local authority). This includes single and recurrent purchases, as well as contracts awarded by the Council, by any person, firm or body on the Council's behalf for works, services (including consultancy) or supplies, regardless of the source of funding for the contract.

A2.3 These Procurement Rules do not apply to contracts of employment, contracts for the purchase or sale of land or securities, or contracts for the taking or granting of any interest in land, unless such contracts also involve the procurement of works, services or supplies.

- A2.4 The appropriate senior manager is responsible for nominating a Lead Officer to undertake the procurement process (including project co-ordination).
- A2.5 The responsibility for compliance with these Procurement Rules, and the Council's Financial Procedure Rules rests with the appropriate Lead Officer unless specified otherwise.
- A2.6 All decisions, documents, quotations, tenders and contracts under these Procurement Rules are open to inspection and monitoring by the Overview and Scrutiny Commission, the Performance and Audit Panel, and the Council's internal and external auditors.
- A2.7 All procurement must be done within the appropriate delegated authority limits, and within the approved budget and applicable financial threshold for each procurement.
- A2.8 No ICT hardware or software procurement may be undertaken without the prior approval of the Head of Financial Services. All ICT procurement must be made in accordance with the Council's ICT Strategy and appropriate ICT Policies.
- A2.9 Where any proposed procurement is proposed which may have strategic implications, or impact upon a service area other than that of the Lead Officer, (for example the purchase of vehicles), the appropriate Head of Service must be consulted beforehand.
- A2.10 Where joint procurement arrangements exist, these must assure compliance with relevant UK Regulations.
- A2.11 All values specified in these Procurement Rules are exclusive of VAT.

### **A3 EXCEPTIONS**

- A3.1 Subject to appropriate financial approvals, the requirement to seek tenders as detailed in section C of these Procedure Rules shall not apply if, in the opinion of the appropriate senior manager it is not reasonably practicable to invite tenders/quotations and/or enter into a written contract, as follows:
- a) Where purchases are made through a government-sponsored framework agreement, central purchasing body, or other such government endorsed arrangements where the Public Contract rules have already been applied
  - b) Where purchases are made using a pre-approved call-off contract

- c) Where the purchase of goods or materials, which are proprietary articles, and any acceptable substitutes for which, are obtainable only from one supplier.
- d) In respect of the execution of work of a specialised nature, and any acceptable substitutes for which, that can be carried out by only one supplier.
- e) In respect of the purchase of goods or materials, which are sold only at fixed prices or prices controlled by trade organisations or in respect of which there would be no competition.
- f) In respect of the execution of work or the purchase of services, goods or materials with a value below Public Contract Rules thresholds, and which are required as a matter of urgency (for example for the repair of or as parts for existing machinery, plant or property). In such circumstances the departure from these Procedure Rules must be reported to the next meeting of the Executive Committee.
- g) Where purchases are to be made at auctions or public fairs.
- f) Where advantage can be taken at short notice of special offers, which produce savings or benefits to the Council, and where the item is clearly required and such savings or benefits are clearly demonstrated
- g) Where contracts have been procured in accordance with Public Contract Rules by another local authority, a local authority consortium or other joint procurement arrangement, another public body, or government-sponsored framework agreement, provided that the Council has the legal power to participate in such a contract. Where there is any doubt as to this power, the Head of Legal & Governance will adjudicate.

A3.2 Except for the circumstances outlined in A3.1 above, exemption from any of the provisions of these Procurement Rules requires the prior approval of the Executive Committee.

A3.3 Where an exemption is requested, this shall not be approved unless the Executive Committee is satisfied that:

- (i) there are legitimate circumstances justifying departure from these Procurement Rules;
- (ii) the exception will not contravene any legal requirement, including the Public Contract Rules;

- (iii) a report from the appropriate senior manager provides evidence that the exception is to the Council's advantage and is necessary to achieve the Council's objectives.

A3.4 The Head of Legal & Governance will maintain a central register of all requests for exceptions for audit purposes.

## **B. PROCUREMENT PROCESS**

### **B1. ASSESSING THE REQUIREMENT**

B1.1 Before undertaking a procurement process the Lead Officer must:

- (a) establish fully the Council's requirements, including whether there is a genuine need for any procurement to take place
- (b) investigate whether the Council's requirements can be met by other means (such as re-use or recycling of existing equipment),

### **B2 ESTIMATING VALUE**

B2.1 If procurement is required, the Lead Officer must:

- (a) estimate its value before committing the council to any expenditure, and establish whether the Public Contracts Rules apply. Information on the Public Contract thresholds is given in the procurement section of the Council's intranet and from the Legal Services section.
- (b) ensure that the estimated value can be met from the appropriate budget (capital and/or revenue),
- (c) establish a business case for the procurement. In the case of procurement with an annual value in excess of £20,000, and which has not previously been approved by an appropriate corporate body within the Council, this business case must be submitted in writing to, and approved by, the Corporate Operational Management Team,
- (d) determine whether this requirement can be met through any existing contract or Framework agreement.

B2.2 For the purpose of these Procurement Rules, the value of a contract should be taken to include all costs, including procurement costs, maintenance costs, and any ongoing revenue or capital costs, which may be incurred by the Council, over the expected lifetime of the contract. Where some or all of the contract price is funded by a third party (e.g. government agency) this funding must be included in the estimated value.

- B2.3 Estimates of value and methods of valuation must be genuine and not divided or otherwise designed to avoid exceeding any threshold contained in these Procurement Rules or under the Public Contract Rules.
- B2.4 For “one-off” procurement the estimated value will be the order value.
- B2.5 For recurrent purchases of the same type of services or supplies, the estimated value for the purposes of compliance with the Public Contract Rules threshold will be the sum of all recurrent spending within one year.
- B2.6 The Lead Officer must ensure that he/she is aware of relevant threshold values under the Public Contract Rules. Information on the Public Contract thresholds is given in the procurement section of the Council’s intranet and the Legal Services section.
- B2.8 The senior manager cannot authorise acceptance where the tender return is in excess of Public Contract Rules threshold and therefore any procurement near the threshold must undertake a Public Contract-compliant tender exercise.
- B2.9 Where, following a tender exercise, the preferred supplier’s contract price is 10% or £5000 (whichever is the greater) or more in excess of the estimated value, the Lead Officer must first obtain the approval of a senior manager to accept the tender, subject to the increased price being within approved budget limits.
- B2.10 Where the procurement rules require that quotes are obtained, the Lead Officer must ensure that a record of such quotes is retained for audit purposes.

### **B3. USE OF SPECIFICATIONS AND CONDITIONS OF CONTRACT**

- B3.1 Every procurement process must specify the Council’s requirement in a clear and precise manner, using outcome performance measures where appropriate. Where a tender exercise is to be used, the Specification must be fully prepared by the Lead Officer and approved by the Head of Legal & Governance before the contract opportunity is advertised.
- B3.2 The Head of Legal & Governance will prepare appropriate conditions of contract before the contract opportunity is advertised.
- B3.2 Specifications must not include requirements that are discriminatory or may distort competition or consist of non-commercial matters.
- B3.3 Specific or proprietary products, sources or processes should not be specified unless this is essential for meeting the Council’s requirement to provide best value. Where procurement is to be undertaken under Public Contract Rules, the specification must encourage the use or provision of

an equivalent product, source or process. Where appropriate, a non-discriminatory quality standard should be specified.

- B3.4 Specifications (and subsequent contracts) must incorporate any approved contract conditions reflecting legal requirements and the relevant policies of the Council from time to time.

## **C. PROCUREMENT PROCEDURES**

### **C1 PROCUREMENT PROCEDURES**

- C1.1 The Lead Officer must ensure that he/she is aware of relevant threshold values under the Public Contract Rules. Information on the Public Contract thresholds is given in the procurement section of the Council's intranet, and advice is available from the Legal Services section.
- C1.2 The Lead Officer must determine the procurement procedure using the table at C5 below and keep a record of their decision.
- C1.3 Subject to Public Contract Rules, the Lead Officer may select the procedure that appears to him/her to be most likely to secure the best combination of costs, benefits and efficiency gains for the Council.
- C1.4 Where the Public Contract Rules apply to the procurement, or the anticipated value of procurement is within 15% of the Public Contract Rules thresholds, it must be undertaken in accordance with the relevant procedure as defined by the Public Contract Rules.
- C1.5 The Lead Officer must ensure that where a tender process is to be undertaken, a system exists for the receipt, opening, registration and evaluation of tenders (See Section D).
- C1.6 Guidance on advertising for tenders, both below and above the Public Contract thresholds, is given in the procurement section of the Council's intranet.
- C1.7 Except where an approved purchasing card or call-off contract is used, or goods/services are procured through a central purchasing body no goods, works or services must be purchased unless a purchase order has been raised.
- C1.8 Official purchase orders must state the price of the goods/services to be supplied, or the means by which the price is to be determined.

### **C2. TIME SCALES UNDER THE PUBLIC CONTRACT RULES**

C2.1 Minimum time limits are prescribed for the receipt of requests to participate in all Public Contract Rules procedures. These time limits can be found in the procurement section of the Council's intranet.

### **C3. INVITATIONS TO TENDER**

C3.1 The Lead Officer will ensure that every invitation to tender gives prospective suppliers sufficient basic information regarding the nature of the proposed contract.

C3.2 Further information regarding the information which needs to be provided in the invitation to tender can be found in the procurement section of the Council's intranet.

### **C4. TENDER DOCUMENTS**

C4.1 The Lead Officer will ensure that all prospective tenderers receive a tender information pack.

C4.2 A list of the documents which must comprise this pack can be found in the procurement section of the Council's intranet.

### **C5 PROCUREMENT OPTIONS**

<b>Estimated value of contract</b>	<b>Applicable procurement procedures</b>	<b>Applicable purchasing methods</b>
£0-999	<ul style="list-style-type: none"> <li>Select one or more suppliers</li> </ul>	<ul style="list-style-type: none"> <li>purchasing card (within authorised limits)</li> <li>official purchase order</li> <li>framework agreement</li> <li>approved call-off contract</li> </ul>
£1,000-4,999	<ul style="list-style-type: none"> <li>Obtain a minimum of two quotations</li> </ul>	<ul style="list-style-type: none"> <li>purchasing card (within authorised limits)</li> <li>official purchase order</li> <li>framework agreement</li> <li>approved call-off contract</li> </ul>

£5,000-49,999	<ul style="list-style-type: none"> <li>• Obtain a minimum of three written quotations</li> <li>• Open tender procedure*</li> </ul>	<ul style="list-style-type: none"> <li>• official purchase order</li> <li>• framework agreement</li> <li>• approved call-off contract</li> </ul>
£50,000 and over, but below Public Contract Rules thresholds	<ul style="list-style-type: none"> <li>• Open tender procedure*</li> <li>• Restricted tender procedure*</li> <li>• Negotiated tender procedure*</li> <li>• Competitive dialogue*</li> <li>• Selective tendering from an approved standing list</li> </ul>	<ul style="list-style-type: none"> <li>• official purchase order</li> <li>• framework agreement</li> <li>• approved call-off contract</li> </ul>
At or above Public Contract Rules thresholds	<ul style="list-style-type: none"> <li>• Open tender procedure*</li> <li>• Restricted tender procedure*</li> <li>• Negotiated tender procedure*</li> <li>• Competitive dialogue*</li> </ul>	<ul style="list-style-type: none"> <li>• official purchase order</li> </ul>

\* Information on how and when to use tender procedures can be found in the procurement section of the Council's intranet, and advice is available from the Legal Services section

C5.1 Wherever possible, procurement should be undertaken electronically, subject to the existence of appropriate processes and systems. This includes, but is not limited to, electronic submission of tenders, electronic transmission of purchase orders and invoices, and the use of electronic auctions and dynamic purchasing systems where applicable.

## **D. REQUIREMENTS RELATING TO RECEIPT OF TENDERS**

- D1. The Democratic Services Manager will oversee the process relating to the receipt of tenders.
- D2. The Lead Officer must inform the Democratic Services Manager of every invitation to tender, specifying the title of the tender and the return date and time.
- D3. The process for receipt of tenders can be found in the procurement section of the Council's intranet.

## **E. ADDITIONAL REQUIREMENTS FOR ALL CONTRACTS**

### **E1. RESTRICTIONS ON CONTRACTS WITH CERTAIN PERSONS**

E1.1 No Contract will be placed with a Member of the Council, nor any supplier in which any Member of the Council, or his/her employer, sponsor or relative has a material interest, unless competitive tenders have first been invited and the contract awarded to the tender which provides the most advantage to the Council. The Monitoring Officer will keep a record of any such contracts and will determine whether or not any interest is material to the contract. For clarity, "relative" means a sibling, partner (someone to whom the Member of the Council is married or lives with as if they were married, or as part of a civil partnership), grandparent, parent, parent-in-law, son, daughter, stepchild, the child of a partner, grandchild, nephew, niece, aunt, uncle, or the spouse or partner of any of the preceding persons.

E1.2 Where contracts are being considered with suppliers in which employees of the Council (or their relatives) have an interest, the Lead Officer should ensure that such employees are not involved in any aspect of the procurement process. Any such interests should be declared to the Monitoring Officer. For clarity, the definition of 'relative' in section E1.1 will apply to section E1.2.

### **E2. CRITERIA FOR SELECTION**

E2.1 The Council shall in all cases accept only the most advantageous tender, in accordance with the pre-determined evaluation criteria.

E2.2 Where the most advantageous tender exceeds the estimated cost of works or goods by £5000 or 10% (whichever is the greater) or more, a report must be submitted by the Lead Officer to the relevant senior manager, who may accept or reject the tender.

### **E3. EXECUTION OF CONTRACTS**

E3.1 All contracts with an annual value over £20,000 must be in writing and signed by a senior manager, and approved by the Head of Legal & Governance.

E3.2 All contracts must comply with the Council's Financial Procedure Rules.

### **E4. COMMENCEMENT OF CONTRACT**

E4.1 No contract shall commence until an official order for the procurement has been issued, where appropriate.

## **E5. CONTRACT MANAGEMENT**

- E5.1 The Lead Officer must ensure that the performance of all contracts is managed throughout the period of the contract, and a formal contract review meeting takes place with the contractor at an appropriately regular interval.
- E5.2 Advice on contract management is given in the procurement section of the Council's intranet.

## **E6. EXTENSION AND VARIATION OF CONTRACTS**

- E6.1 Contracts let under Public Contract Rules must not be extended beyond the period for which they were awarded unless provision for extension was included in the contract documents.
- E6.2 All additions or variations to a contract must be authorised by the relevant senior manager, in conjunction with the Head of Legal & Governance. Such authorisation may only be given where the additional whole life cost is within the approved budget.
- E6.3 If the Lead Officer has reason to believe that the estimated final cost of any contract will exceed the available budget, he/she must inform the Head of Financial Services immediately.

## **E7. CLAIMS ARISING FROM CONTRACTS**

- E7.1 Claims arising from contracts in respect of matters not clearly within the terms of any existing contract will be determined by the Head of Legal & Governance on the Council's legal liability and by the Head of Finance & Resources on the financial considerations.
- E7.2 Where completion of a contract is likely to be delayed, resulting in claims under the contract, the Lead Officer must inform the Corporate Operational Management Team of the action taken or proposed.

## **E8. REGISTER OF CONTRACTS AND PARTNERING AGREEMENTS**

- E8.1 The Head of Customer & Environmental Services will maintain a Register of Contracts and Partnering Agreements.

## **E9. COMPLIANCE WITH COUNCIL POLICY**

- E9.1 Suppliers will be expected to act in a manner commensurate with the Council's policies, and particularly with regard to Council policies on Equality and Diversity, Health and Safety, and sustainability.

## **E10. TERMS AND CONDITIONS**

- E10.1 All procurement must be made under the Council's standard Terms and Conditions, unless to do so would be to the Council's disadvantage. Any proposed variation to or departure from the Council's standard Terms and Conditions must be agreed in advance by the Head of Legal Services.
- E10.2 The Council's Terms and Conditions can be found in the procurement section of the Council's intranet.

**GLOSSARY OF TERMS**

“Advantageous” means the quotation or tender that offers the optimum combination of whole-life costs, benefits and efficiency gains to meet the Council’s requirement.

“Best Value” means the optimum combination of whole-life costs (including procurement costs) and benefits (including efficiency gains) to meet the Council’s requirement.

“Competitive dialogue” means a procedure for awarding a particularly complex contract which involves a dialogue with bidders to develop one or more alternative solutions.

“Compliant” means completed and submitted in accordance with Instructions to Tenderers and any other requirements specified in the Invitation to Tender.

“Contract” means an agreement between the Council and any supplier made by executing a formal Agreement or by issue of a letter of acceptance or official order for the procurement of all supplies, services and the execution of works by the Council, or carrying out of works for the Council.

“Council’s requirement” means the outputs, outcomes and the scope and nature of supplies, services or works required by the Council from a procurement process.

“Lead Officer” means the officer designated by the appropriate senior manager to undertake a procurement exercise

“Negotiated Tender Procedure” means an exceptional procedure under which negotiation is permitted with selected firms before a contract is awarded

“Officer” means any employee of the Council.

“Open Tender procedure” means a procedure for inviting tenders without prior shortlisting of firms.

“Partnering arrangements” means a long-term contractual arrangement with another firm or body to secure high quality cost-effective service provision and/or support for the in-house service delivery.

“Public Contract Rules” means the Treaty of Rome, the EU Public Procurement Directives and the Public Services Contracts Regulations 1993, the Public Supply Contracts Regulations 1995 and the Public Works Contracts Regulations 1991 as amended or replaced.

“Quotation” means a formal offer to supply or procure goods or materials, execute works or provide services at a stated price.

“Restricted Tendering Procedure” means a procedure in which firms are invited to tender who have been previously shortlisted.

“Senior manager” means a member of the Strategic Management Team or a member of the Corporate Operational Management Team.

“Selective Tendering from Standing List” means a procedure under which tenders are invited from firms specified on an approved list or database.

“Services” means the services provided by the supplier in accordance with the contract, and includes the employment of consultants or temporary employment agencies.

“Supplies” means goods, materials or equipment.

“Supplier” means any sole trader, partnership or company (limited or unlimited) or any duly incorporated trade, professional or commercial body whose tender or quotation is accepted.

“Tender” means a formal offer to supply or procure goods or materials, provide services or execute works at a stated price.

“Tender Documents” means the Conditions of Tender and Contract, the Form of Tender, the Specification, the Form of Agreement and any other related documents or papers.

“Tenderer” means any prospective supplier submitting a tender.

“Works” means building and engineering work carried out in respect of any physical structure.

“Writing”: the requirement that any document should be in writing is satisfied where (apart from the usual meaning of that expression) the text of it is created and transmitted or stored by electronic means, in legible form, and capable of being used for subsequent reference.