



# Part 4G

## Contract Procedure Rules

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## **PART 4 – CONTRACT PROCEDURE RULES**

### **1. APPLICATION/COMPLIANCE WITH CONTRACT PROCEDURE RULES**

- 1.1 These Contract Procedure Rules are made under Section 135 of the Local Government Act 1972 and apply to all Contracts for the Procurement of Goods, Works, Services or Concessions made in the name of the Council.
- 1.2 Where in these Rules “the Council” is referred to, the term shall include the reference to School Governing Bodies by virtue of the Scheme for Financing Schools.
- 1.4 Every Contract entered into by the Council shall be entered into pursuant to or in connection with the Council’s functions and shall comply with:
  - 1.4.1 All relevant statutory provisions;
  - 1.4.2 The relevant European Procurement rules (the EC Treaty, the general principles of community law and the European Union’s Public Procurement directives implemented by the UK Regulations);
  - 1.4.3 The Council’s Constitution including these Contract Procedure Rules, the Council’s Financial Procedure Rules and the Officer and the Executive Member Scheme of Delegation; and
  - 1.4.4 The Council’s strategic objectives and policies including, amongst others, the Corporate Plan.
- 1.5 These Contract Procedure Rules apply to all Contracts awarded by the Council for Goods, Works, Services or Concessions, regardless of the source of funding for the Contract. They apply to Procurement by any form of official Council order and equally to Contracts awarded by any person, firm or body on the Council’s behalf.
- 1.6 No Contract shall be entered into unless the appropriate Deputy Chief Executive or Strategic Director is satisfied that there is adequate budget provision and all necessary consents to the expenditure have been obtained.
- 1.7 Where a Contract involves the making of a Key Decision as defined in Article 14.2.2 of the Constitution, the Deputy Chief Executive or Strategic Director shall ensure that the Director of Legal Services and the Director of Finance are consulted throughout the procurement process.
- 1.8 For any Contracts above the £50,000 threshold a Pre-Procurement Approval Form must be completed and signed by the appropriate Officer(s).
- 1.9 It shall be a condition of any Contract between the Council and any persons (not being Officers of the Council) who are required to supervise a Contract on the Council’s behalf, that in relation to such Contract, those persons shall comply

with the requirements of these Contract Procedure Rules as if they were Officers of the Council.

- 1.10 These Contract Procedure Rules shall not apply to:
  - 1.10.1 Contracts of employment.
  - 1.10.2 Contracts for personal social care or educational need where in the opinion of the appropriate Deputy Chief Executive or Strategic Director (following consultation with Director of Legal Services) there is a demonstrable individual need, which renders Procurement impractical.
  - 1.10.3 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 involve details of the Council's specific requirements and or the Procurement of Goods, Works or Services.
  - 1.10.4 Contracts for Goods to be brought to auction and the Director of Finance has agreed in writing that the Council's interests will best be served by purchase through auction and has similarly agreed an upper limit for bids.
  - 1.10.5 Contracts for the use of counsel or other legal representation where the Director of Legal Services considers that a Procurement exercise would be impractical and would not protect the Council's interests. All contracts for the use of counsel or other legal representation must be commissioned and/or approved by Legal Services.
  - 1.10.6 Contracts for Works of art or theatre, which are genuinely exclusive.
  - 1.10.7 An existing Purchasing Consortia which has been procured under public procurement rules broadly comparable with these Contract Procedure Rules where the Council is a named Contracting Authority.
  - 1.10.8 Existing nationally negotiated Contracts or Framework Agreements which are available to the Council as a named Contracting Authority.
  - 1.10.9 The sale or provision of services delivered by the Council.
  - 1.10.10 Grants received by the Council and grants distributed by the Council provided the grant is not for the provision of a service for the Council. .
- 1.11 Any failure to comply with any of the provisions of these Contract Procedure Rules shall be reported to the relevant Deputy Chief Executive or Strategic Director and may result in disciplinary action.
- 1.12 The Deputy Chief Executive or Strategic Director shall take immediate action in the event of a failure to comply with these Contract Procedure Rules and shall inform and consult with the Director of Legal Services.
- 1.13 Any dispute regarding the application of these Contract Procedure Rules shall be referred to the Directors of Finance and Legal Services for advice.
- 1.14 The final arbiter for resolution of disputes regarding the application or interpretation of these Contract Procedure Rules shall be the Director of Legal Services whose decision shall be binding and final.

1.15 Persistent breach of the Contract Procedure Rules will also be reported to Council Members.

## **2. COMMISSIONING & PROCUREMENT PLANNING**

2.1 For each financial year, the Council shall create a strategic procurement forward plan setting out its current Contracts and Contracts to be procured for the forthcoming financial year. The coordination and updating of this plan will be the responsibility of the Commercial Procurement Unit. The strategic procurement forward plan will be published on the Oldham Council website.

2.2 The Council must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness in accordance with Section 3 Local Government Act 1999 (“ Best Value”). This includes consultation with representative groups of payers of Council tax and business rates, stakeholder(s) and any other relevant interested groups prior to commissioning services.

2.3 The Council must consider its obligations under the Public Services (Social Value) Act 2012 and have regard to economic, social and environmental well-being in connection with public services contracts and for connected purposes in its planning and commissioning processes.

2.4 The Council must consider its obligations with regard to data protection under the General Data Protection Regulation and the Data Protection Act 2018 and in particular its responsibilities and that of the supplier in relation to the processing of personal data through the outsourcing of its services, including specifying the conditions for processing and retaining personal data.

2.5 The Council must ensure that any collaborative arrangements/agreements with other public bodies to procure Goods, Works or Services must comply with public procurement legislation and ensure value for money and that the Council's interests are fully protected.

2.6 The Public Contract Regulations 2015 permit soft market testing provided it does not distort competition and is transparent and non-discriminatory.

2.7 Where an organisation has been involved at a pre-procurement stage (whether in soft market testing or otherwise, e.g. incumbents), the Council must ensure that there is a level playing field when the tender process starts such as making information which has been made available at a pre-procurement stage available to all bidders.

2.8 A bidder may be excluded from the procurement process altogether in circumstances where its prior involvement would distort the competition in the market.

### **3. CALCULATION OF CONTRACT VALUES**

- 3.1 The estimated value of a Contract shall be the total consideration payable, net of value added tax, which the Council expects to be payable under the Contract.
- 3.2 The total Contract Value shall be calculated as follows:
  - 3.2.1 Where the 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 permitted extension.
  - 3.2.2 Where the Contract period is indefinite or uncertain, by taking the monthly price payable under the Contract multiplied by 48.
  - 3.2.3 In relation to a Framework Agreement with no guaranteed commitment, the Contract Value will be the estimated value of Goods, Works or Services over the full duration of the Contract.
  - 3.2.4 Where the Council has a single requirement for Goods, Works or Services, and a number of Contracts have been entered into, or are to be entered into, the total Contract Value is the aggregated value of each of these Contracts.
- 3.3 Under Regulation 46 of the Public Contracts Regulations 2015, Contracting Authorities may divide tenders into smaller lots to encourage small and medium sized business enterprises to submit bids and must provide reasons for not doing so.
- 3.4 Contracts should not be artificially under or overestimated or divided into two or more separate Contracts where the purpose is to avoid the application of these Contract Procedure Rules.

### **4. PROCUREMENT PROCEDURES**

- 4.1 Where an existing Contract, Framework Agreement, Dynamic Purchasing System or in-house service is available to meet the Council's specific Procurement requirements and offers value for money it should be used unless there are particular circumstances which justify an alternative route to market.
- 4.2 An E-auction process may form part of the overall Tender process and shall be used in conjunction with the Open or Restricted Procedures or Competitive Dialogue or Competitive Procedures with Negotiation. The Contract Notice or Advertisement and the Invitation to Tender documentation shall state that an E-auction will form part of the Tender process.
- 4.3 If Rule 4.1 does not apply, the Council must comply with the procurement table below which sets out the required procedure for different contract values the minimum number of tenders that must be invited and how invitations to tender must be publicised.

<b>Contract Value</b>	<b>Procurement Activity</b>	<b>Instructions</b>	<b>Minimum Requirement for Advertising the Opportunity</b>
0 - £9,999	1 Written Quotation.	Service Area to obtain at least 1 written Quote following the instructions in Rule 4.4 below and file ready for audit inspection. Local Supply Chain including SMEs to be considered where practical.	N/A
£10,000 - £24,999	Minimum of 3 Written Request for Quotations.	Service Area to contact Strategic Sourcing who will instruct the appropriate procurement procedure and facilitate the process using the Council's E-Procurement System (The Chest). Local Supply Chain including SMEs to be considered – at least 1 local supplier (where practical) to be included.	The Chest
£25,000 – £49,999 for Goods & Services/ £25,0000 to £99,999 for Works	Open Request for Quotations or an agreed compliant Framework.	.	The Chest and Contracts Finder (if appropriate)*
£50,000 Goods & Services/ £100,000 Works up to EU Threshold	Formal Tender Process or an agreed compliant Framework.	Service Area to contact Strategic Sourcing who will instruct the appropriate procurement procedure to follow in accordance with these Contract Procedure Rules and facilitate the process using the Councils E-Procurement System (The Chest).	The Chest and Contracts Finder
EU Thresholds and Above	Full EU Procurement Procedure or Framework.	Service Area to contact Strategic Sourcing who will instruct the appropriate EU procurement procedure to follow and facilitate the process using the Councils E-Procurement System (The Chest) and Contracts Finder.	Open advert mandated in OJEU and Contracts Finder with the exception of Framework competitions.

- **\*The Council must be mindful of the EU Treaty Principles set out in Rule 4.4 below and advertise all procurement opportunities in accordance with the table in Rule 4.3 above unless an exemption from the Contract Procedure Rules has been granted in accordance with Rule 21 below.**

4.4 Where, in the above table, the Council is at liberty to select which suppliers are invited to bid, due consideration must be given to the EU Treaty principles in Rule 4.5 below and the principles of fair trading, competition and value for money so as to extend the opportunity to bid for local government contracts to as wide as possible market to afford equal opportunity.

4.5 The rules relating to the required process and timescales shall be observed for all Contracts as shall the EC Treaty and the general principles of EC law including equal treatment and non-discrimination, transparency, mutual recognition and proportionality.

## **5. QUOTATION PROCESS**

5.1 Written Quotation(s) shall be obtained from Contractor(s) pursuant to the procedure set out in the table in Rule 4.3 before a formal purchase order can be issued. A formal purchase order shall be issued after the Quotation(s) have been received and shall specify the Goods, Works or Services to be provided or Concession to be granted and set out the price and terms of payment and incorporate the Council's relevant standard terms and conditions of contract (either by inclusion on the purchase order or by reference).

5.2 Quotations over £10,000 for goods and services must to be advertised on the Council's E-procurement system (The Chest) and any Quotations over £25,000 which have been advertised must also be advertised on Contracts Finder.

5.3 At least one local supplier/service provider should be included in each Request for Quotation, where possible.

5.4 Where fewer than three Contractors are considered suitable to supply the required Goods, Works or Services or to be granted a Concessions, those Contractors shall be invited to quote.

5.5 The standard Council templates for Quotations shall be utilised for all Procurement activity.

5.6 All Quotation(s) sought shall be recorded in writing for audit purposes via the Council's Finance Management System (AGRESSO or Framework) and/or equivalent systems as agreed by Council.



## **6. TENDER PROCESS – Below EU Procurement Threshold**

- 6.1 All Tendering opportunities should be advertised via the Council's E-procurement system (The Chest) and Contracts Finder where appropriate (See table Rule 4.3). The Invitation to Tender, should include all of the information listed in Rule 9.2 below.
- 6.2 Any Procurement opportunity advertised shall:
  - 6.2.1 Specify the details of the Contract into which the Council wishes to enter;
  - 6.2.2 Invite persons or bodies to express an interest in Tendering;
  - 6.2.3 Specify a date or time limit, being not less than 14 days within which such Tenders are to be submitted.
  - 6.2.4 Be advertised in Contracts Finder if the contract value exceeds £25,000.

## **7. TENDER PROCESS – Above the EU Procurement Threshold**

- 7.1 Where an estimated Contract Value exceeds the current EU procurement thresholds, then the Contract shall be tendered in accordance with the Public Contract Regulations 2015 or the Concession Contracts Regulations 2016. Under the Public Contract Regulations 2015, the Contract may be Tendered under Open, Restricted, Competitive Dialogue, Competitive Procedure with Negotiation or Innovation Partnerships Procedure.
- 7.2 A Contract Notice or a Prior Information Notice in the prescribed form shall be published in the Official Journal of the European Union in order to invite Tenders or expressions of interest.
- 7.3 All Official Journal of the European Union (OJEU) Notices shall be published by the Commercial Procurement Unit.
- 7.4 **Competitive Dialogue**
  - 7.4.1 A Competitive Dialogue procedure or Competitive Procedure with Negotiation may be beneficial in circumstances where greater flexibility is needed, e.g. for highly complex and risky projects where bidders will have a major role in defining the solution or where an Open or Restricted Procedure may not deliver the expected outcomes.
  - 7.4.2 A Competitive Dialogue procedure allows the Council to negotiate proposed solutions with bidders to achieve a desired outcome.

7.4.3 The Council must publish the minimum requirements, the award criteria and their weightings, which should not be changed during the negotiation process. During the dialogue, the Council must ensure equal treatment of all participants and must not provide information in a discriminatory manner which may give any participant an advantage over others.

7.4.4 Advice from Legal Services must be sought prior to embarking upon a Competitive Dialogue Process.

## **7.5 Concession Contract**

7.5.1 The European Concession Contracts Regulations 2016 (CCR's) state that any Concession Contract over the value of £4.1m must be advertised in the European Journal. As such there are certain procedural guarantees which must be met: award criteria must be published in descending order of importance and the contract evaluation made in accordance with them; minimum time limits for the receipt of tenders and the mandatory and discretionary exclusion criteria must be applied. An OJEU notice must be published for over threshold tenders as per the CCR guidelines.

## **8. FRAMEWORK AGREEMENTS**

### **8.1 CALL OFF ORDERS**

8.1.1 Where an order (Call Off) is proposed for a Procurement under an existing Framework Agreement, that has been established by a consortium, collaboration, the Council or other public body, the Council may consider using this Framework Agreement if:

- a. The Agreement has been established by an entity, and via a process, which permits the Council to access those arrangements lawfully;
- b. The Council is a named Contracting Authority.

8.1.2 Before undertaking a Call-Off under any Framework Agreement, thorough due diligence should be undertaken and advice sought from the Commercial Procurement Unit and Legal Services to confirm it is able to be used and whether it is appropriate to use it.

8.1.3 Call-off orders must be awarded based on the evaluation criteria identified in the Framework Agreement.

8.1.4 Where the Call-Off is undertaken via a direct award process (which is prescribed in the Framework Agreement), the Contractor must be requested, in writing, to supply a written submission, that is verified to confirm it can meet the requirements of the Council in accordance with the terms and conditions and the

pricing established in the Framework Agreement, in advance of executing a call-off order.

- 8.1.5 Subject to the due diligence confirming the suitability of the Framework Agreement, it can be used as a potential route to market without going down one of the procedures outlined in Rule 4

## **8.2 ESTABLISHING A FRAMEWORK AGREEMENT**

- 8.2.1 Where the Council is establishing a Framework Agreement which may be accessed by other named Contracting Authorities, the estimated Contract value must take account of all potential work that may be put through the agreement (see Rule 4) and follow the procedures set out in these Contract Procedure Rules.
- 8.2.2 If the Council is establishing a Framework Agreement in accordance with Contract Procedure Rule 8.2.1, reference must be made within the procurement documents explaining that the Framework Agreement is intended for a wider use and advice should be sought from Legal Services to ensure the terms upon which other Contracting Authorities access those arrangements are clear and offer appropriate protection to the Council.
- 8.2.3 In establishing a Framework Agreement, the total duration (including any extensions) cannot exceed four years except in exceptional circumstances relating to the subject matter. Any proposal to establish a Framework Agreement with a duration exceeding four years should be referred to the Commercial Procurement Unit and Legal Services for advice.
- 8.2.4 Where, taking into account the above, the estimated value of the Framework Agreement is above the relevant EU threshold, the authorised officer must ensure that the names of the other public bodies (Contracting Authorities) are included in the OJEU notice either individually or by an identifiable class.
- 8.2.5 In establishing a Framework Agreement, the Council must ensure that the terms of the Framework Agreement make the process clear by which call-off orders under the Framework Agreement are to be entered into.

## **9. TENDER DOCUMENTATION**

- 9.1 The standard Council templates for Tendering shall be utilised for all Procurement activity.
- 9.2 As a minimum, tender documents shall include details of the Council's requirements for the particular Contract including:
- 9.2.1 A description of the Goods, Works or Services being procured or Concessions granted now or in the future;

- 9.2.2 The Procurement timetable including the Tender return date and time, which shall allow a reasonable period (a minimum of 14 days) for applicants to prepare their Tenders to submit electronically;
- 9.2.3 For tenders over the EU Procurement threshold, the timetables prescribed by the Public Contract Regulations 2015 should be used;
- 9.2.4 A detailed specification and instructions on whether any variant bids are permissible;
- 9.2.5 The Council's Terms and Conditions of Contract;
- 9.2.6 The evaluation criteria to be used including any weightings as considered appropriate, together Social Value questions;
- 9.2.7 Pricing mechanism and instructions for completion;
- 9.2.8 Whether the Council is of the view that TUPE will apply (if applicable);
- 9.2.9 The pension arrangements for existing/former Council employees;
- 9.2.10 Form and content of method statements to be provided (if applicable);
- 9.2.11 Rules for submitting of Tenders; and
- 9.2.12 Any further information, which will inform or assist Tenderers in preparing Tenders.

## **10. CONTRACT TERMS AND CONDITIONS**

- 10.1 All written Contracts and Purchase Orders shall include the Council's terms and conditions for Works, Goods and/or Services or Concessions (as appropriate) and the Invitation to Tender or Quotation shall state that the Contract will be subject to the Council's terms and conditions. These are available to view on the Council's webpage: [Procurement | Oldham Council](#).
- 10.2 Any amendments required to the Council's standard terms and conditions shall be approved by Legal Services prior to issuing as part of the Tender process. Legal Services will review and draft the terms and conditions for any bespoke contracts.
- 10.3 All written Contracts shall include the following:
  - 10.3.1 Every Contract shall, as a minimum, unless there is good and sufficient reason to the contrary, require that all goods, and materials used or supplied and all workmanship shall, if applicable, be in accordance with the relevant standard or equivalent European or International standard without prejudice to any higher standard required by the Contract.
  - 10.3.2 A clause empowering the Council to cancel or terminate the Contract if the Contractor offers an inducement or reward in relation to the procurement of any Contract by the Council, to exclude the Contractor from the tender, under mandatory grounds or discretionary grounds for a serious infringement of the Public Contracts Regulations 2015, and to recover from the Contractor the amount of any loss resulting from such cancellation or termination.

## **11. RECEIPT AND OPENING OF TENDERS**

### **11.1 Electronic Tenders**

- 11.1.1 Requests for Quotations and Invitations to Tender shall be transmitted by electronic means where possible. Quotations and Tenders shall be submitted by electronic means provided that:
  - 11.1.1.1 Evidence that the transmission was successfully completed is obtained and recorded; and
  - 11.1.1.2 Electronic Tenders are kept in a separate secure folder in the E-procurement system (The Chest), which are not opened until the deadline has passed for receipt of Tenders.
- 11.1.2 Legal Services will open all Tenders with a value of £50,000 or over.
- 11.1.3 A member of the Commercial Procurement Unit will open all requests for Quotations with a value in excess of £10,000.00 but below the EU Threshold.

## **12. PRE AND POST TENDER CLARIFICATIONS**

- 12.1 It is permitted to provide pre tender clarification to potential or actual tenderers. All responses should be published on the Chest.
- 12.2 Post tender clarification may be undertaken with tenderers only where it is essential to clarify an obvious error in the tender submission before completion of the evaluation process. This includes abnormally low bids where specific legal advice is required.
- 12.3 All pre and post tender clarifications must be conducted in writing or in a meeting with written minutes. All correspondence or notes of meeting must be documented and retained on The Chest. Where a meeting is required, there must always be more than one Officer present.
- 12.4 At all times during the clarification process the Council shall consider and implement the principles of non-discrimination, equal treatment and transparency.
- 12.5 Unless otherwise permitted by the Public Contracts Regulations 2015, in no circumstances are post award negotiations permitted.

## **13. TENDER EVALUATION**

- 13.1 All Tenders subject to the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016 shall be evaluated in accordance with the relevant EU Procurement Regulations and the evaluation criteria set out in the Invitation to Tender. All other Tenders shall be evaluated in accordance with the evaluation criteria set out in the Invitation to Tender.

- 13.2 The evaluation team must ensure that the bid is compliant and that the tenderer is not excluded from bidding under any of the mandatory or discretionary grounds listed in the Public Contracts Regulations 2015.
- 13.3 The evaluation criteria shall be predetermined and approved by the appropriate Officer(s) and listed in the Invitation to Tender documentation, in order of importance. In addition, the evaluation criteria shall be strictly observed (and remain unchanged) at all times throughout the Contract Award procedure.
- 13.4 All Tenders shall be awarded on the basis of being the “Most Economically Advantageous”.
- 13.5 All tenders must be evaluated in accordance with the following principles:
- Transparency – there should be no departure from the award criteria.
  - Equal treatment - there should be an identical approach to the evaluation of each tender
  - Manifest error – do check the scores and calculations to ensure that there is no manifest error.
  - Record keeping – all original records should be kept together with handwritten comments to complete the audit trail.
- 13.6 Tenderers should be offered individual written feedback comparing their bid with that of the successful bid giving the characteristics and relative advantages of the successful bid in relation to each scored question to assist them in preparing future bids.

#### 14. AWARDING CONTRACTS

- 14.1 All Contracts shall be awarded in accordance with the published evaluation criteria and in accordance with the Officer and Executive Member Scheme of Delegation in the table below and the decision notice recorded and published on Modern.gov:

<b>Contract Value</b>	<b>Procedure</b>	<b>Awarded By</b>	<b>Decision Recorded on</b>
<b>Less than £10,000</b>	Contract Procedure Rules (CPR)  1 written Quote	Authorised Officer (as per Departmental Scheme Delegation)	Related spend is recorded (Purchase Order) via Finance Management System (AGRESSO)
<b>Between £10,000 and £25,000</b>	Contract Procedure Rules (CPR)  3 written Quotes	Authorised Officer (as per Departmental Scheme Delegation)	Related spend is recorded (Purchase Order) via Finance Management System (AGRESSO)

<b>Between £25,000 and £100,000</b>	Contract Procedure Rules (CPR)  3 Open Tender process or an agreed compliant Framework	Authorised Officer (as per Departmental Scheme Delegation)	E-procurement System (The Chest) and Modern Governance System and Contracts Finder for Contracts with a value over £25,000.00.
<b>Between £100,000 and £400,000</b>	3 Open Tender process or an agreed compliant Framework	Executive Member in consultation with the Deputy Chief Executive or Strategic Director, DAS or Director of Children's Services over £100K and less than £400K	E-procurement System (The Chest) Modern Governance System or equivalent and Contracts Finder
<b>Over £400,000 or over</b>	3 Open Tender process or an agreed compliant Framework	Cabinet or Sub-Committee including Commissioning Partnership Board	E-procurement System (The Chest) and Modern Governance System or equivalent and Contracts Finder

- 14.2 No Contract may be awarded unless budget release has been obtained in accordance with the Financial Procedure Rules and a Modern Gov report and Decision Notice is published authorising any spend of £50K or more confirming that the approved expenditure will be constantly monitored. A copy of the final version of the Modern Gov report must be forwarded to the Commercial Procurement Unit at [strategic.sourcing@oldham.gov.uk](mailto:strategic.sourcing@oldham.gov.uk) to upload on The Chest.
- 14.3 Where the Tender is not within the relevant approved budget but additional budgetary provision is available, the Contract may be awarded, with the approval of the Chief Finance Officer having ensured compliance with the Financial Procedure Rules.
- 14.4 A Contract which has a contract value above the Public Contracts Regulations 2015 thresholds can only be awarded after a notice of the proposed award has been given to all unsuccessful Bidders and the 10 day standstill period has elapsed from the date the notice was given. If the 10 days expire on a non-working day, then the notice period will be deemed to have lapsed on the next working day.

- 14.5 Once the decision to award a Contract is made, each Bidder must be notified in writing of the outcome. All Bidders must be notified simultaneously and as soon as possible of the intention to award the Contract to the successful Bidder(s) and this should be done via The Chest. The letters must include a description of the characteristics and relative advantages of the successful Tender.
- 14.6 A Contract Award letter will be sent to the successful bidder incorporating the Council's advertised standard terms and conditions of Contract unless the parties have agreed to use a bespoke Contract. The terms and conditions of the bespoke Contract may not be varied post award save for minor amendments
- 14.7 A Contract Award notice must be published in the OJEU and on the Council's website no later than 30 days after the date of award of the Contract (48 days in the case of a Concession Contract) where the Contract value exceeds the Public Contracts Regulations/Concession Contracts Regulations threshold. A Contract Award notice must also be published on Contracts Finder.
- 14.8 Contracts (and any subsequent variations) with a value of £50,000 or more shall be executed under the Council's common seal by Legal Services.
- 14.9 All Contracts over £5,000 shall be published on and embedded in the Council's Contracts Register maintained by the Commercial Procurement Unit.

## **15. FINANCE MANAGEMENT SYSTEM**

- 15.1 The Council's Finance Management System (AGRESSO), or equivalent, shall be used to place all orders with suppliers. This includes all orders placed after Quotations are received or a Tender process has been undertaken.
- 15.2 To set up a new supplier, refer to the intranet for further information.

## **16. PERFORMANCE BONDS AND GUARANTEES AND LIQUIDATED DAMAGES**

- 16.1 The Director of Finance shall determine the degree of security (if any) required to protect the Council from a Contractor default and will advise if this needs undertaking whilst providing financial comments in the Modern.gov report or equivalent. This may be liquidated damages, a performance bond, parent company guarantee, retention or some other form of financial or performance guarantee as considered appropriate.
- 16.2 A retention should be written into the terms and conditions of any contract for Works, with a value in excess of £50,000, unless the Director of Legal Services agrees to waive the specific requirement.



## 17. MODIFICATIONS

- 17.1 Subject to Rule 17.2 a Modification may be permitted if any of the limited criteria below applies:
- (a) the original tendered Contract contains clauses allowing such Modifications provided that such clauses:
    - i) List the scope and nature of possible Modifications as well as the conditions under which they may be used, and
    - ii) do not provide for Modifications that would alter the overall nature of the Contract or the Framework Agreement;
  - (b) the Modification is for additional Goods, Services or Works by the original Contractor that have become necessary and were not included in the initial procurement, where a change of Contractor:
    - i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, or
    - ii) would cause significant inconvenience or substantial duplication of costs for the Council;
  - (c) where all of the following conditions are fulfilled:
    - i) the need for the Modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;
    - ii) the Modification does not alter the overall nature of the Contract;
    - iii) any increase in price does not exceed 50% of the original contract value.
  - (d) where a new Contractor replaces the one to which the Council had initially awarded the Contract as a consequence of:
    - i) a clause or option in conformity with Rule 17.1(a); or
    - ii) a takeover of the Contractor following corporate restructuring, including takeover, merger, acquisition or insolvency, by another Economic Operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail any other substantial Modifications to the Contract;
  - (e) provided that the proposed Modification, irrespective of its value, is not substantial within the meaning of Rule 17.3.
- 17.2 A Modification of a Contract or a Framework Agreement during its term shall be considered substantial for the purposes of Rule 17.1 where one or more of the following conditions is met:
- (a) the Modification renders the Contract or the Framework Agreement materially different in character from the one initially concluded;
  - (b) the Modification introduces conditions which, had they been part of the initial procurement procedure, would have:
    - i) allowed for the admission of other candidates than those initially selected,

- ii) allowed for the acceptance of a Tender other than that originally accepted, or
    - iii) attracted additional participants in the procurement procedure;
  - (c) the Modification changes the economic balance of the Contract or the Framework Agreement in favour of the Contractor in a manner which was not provided for in the initial Contract or Framework Agreement;
  - (d) the Modification extends the scope of the Contract or Framework Agreement considerably;
  - (e) a new Contractor replaces the one to which the Council had initially awarded the Contract in cases other than those provided for in Rule 17.3(d).
- 17.3 For the purposes of Rule 17.2, if several successive Modifications are made, the value shall be assessed on the basis of the net cumulative value of the successive Modifications.
- 17.4 Procedure for Modifications
- 17.4.1 A Modern.gov report must be completed which provides full details of the Modification and any supplementary documentation to enable the relevant Decision Maker (see table in Rule 14.1) giving the approval to make a fully informed decision.
  - 17.4.2 In giving approval, the Decision Maker must take account of any advice given by the Head of the Commercial Procurement Unit and the Director of Legal Services and must ensure that such advice is included in any report to the Decision Maker.
  - 17.4.3 Written approval must be obtained to any Modification in accordance with the Council's Officer and Executive Member Scheme of Delegation.
  - 17.4.4 No commitment should be made to a potential Contractor prior to approval.
  - 17.4.5 The Head of the Commercial Procurement Unit is responsible for ensuring that a complete record of all Modifications is kept and a record of the decision approving a Modification and the reasons for it must be stored electronically in Modern.gov and on The Chest.
  - 17.4.6 A notice of the Modification of a contract with a value over an OJEU Threshold must be published in the Official Journal of the European Union.

## **18. TERMINATION OF CONTRACTS**

- 18.1 The Director of Legal Services shall be consulted with regard to any termination or proposed termination of any Contract or Framework Agreement.

## **19. CLAIMS ARISING FROM CONTRACTS**

- 19.1 Officers shall inform the Director of Legal Services immediately of any claims (or anticipated claims) by or against Contractors that are the subject of a dispute between the Council and the Contractor.

- 19.2 Claims arising in respect of matters not clearly within the terms of any existing Contract shall be determined by the appropriate Deputy Chief Executive after having taken the advice of the Director of Legal Services and the Director of Finance.
- 19.3 Where completion of a Contract is likely to be delayed, resulting in claims under the Contract, the appropriate Deputy Chief Executive shall inform the Director of Legal Services and the Director of Finance of the action taken or proposed.

## **20. MONITORING CONTRACTS**

- 20.1 All Contracts must have a Council Contract Owner.
- 20.3 The Contract Owner will be responsible for reviewing, monitoring and evaluating the Contract to ensure that its provisions and the Goods, Services or Works (or Concession) within it are being followed and performed as they should be. The Contract Owner should understand the Specification, contractual terms and the performance framework and must manage activity ensuring that Contracts do not require any extensions beyond the permitted or planned expiry.
- 20.4 During the life of the Contract, the Contract Owner should monitor the Contract in respect to the following:
- (a) Performance (against agreed KPIs where relevant) ensuring that where performance falls below expected standards this is managed promptly;
  - (b) Compliance with the Specification and Contract;
  - (c) Cost, ensuring that there are no unanticipated variations in price or spend;
  - (d) Any Social Value requirements;
  - (e) Risk Management ensuring risks associated with the Contract are identified and managed and any risk registers are kept up to date;
  - (f) Safeguarding where appropriate; and
  - (g) User satisfaction.
- 20.5 The final certificate for payment for any capital Contract should not be paid until the Contract Manager has performed a reconciliation of all Works completed against the approved costs of the scheme.
- 20.6 Where any sum or damages is payable to the Council as a result of the default of a Contractor, for example where completion of Works is delayed beyond the contractual completion date, it shall be the duty of the Contract Owner to claim whatever liquidated or other damages may be due under the terms of the Contract and no waiver of such sum or damages may be given without the approval of the Director of Legal Services and the Chief Finance Officer.
- 20.7 Where a contractor is in breach of its performance of a Contract, a default notice should be issued under the terms and conditions of the Contract to enable the

Council to exercise its discretion to claim damages and/or terminate the Contract and exclude the tenderer from any future tender process.

- 20.8 Where the Contract is to be re-let, any information gathered by the Contract Owner should be available to inform the approach to re-letting the next Contract.
- 20.9 The Contract Owner should provide advice and support on good practice in performance management of Contracts.
- 20.10 All Contracts with a value in excess of £5,000 must be included and published on the Contracts Register maintained by the Commercial Procurement Unit in line with the Local Government Transparency Code 2015. This is a mandatory requirement and it is the responsibility of the Deputy Chief Executive or Strategic Director for each service to ensure that they have informed the Commercial Procurement Unit of the Contracts they are responsible for and provided them with the information necessary to update the Contracts Register.

## **21. EXEMPTION FROM THE CONTRACT PROCEDURE RULES**

- 21.1 These Rules are mandatory but, in limited circumstances, it may be necessary to seek an Exemption from these Rules and guidance from the Commercial Procurement Unit must be sought before any Procurement Activity commences for which an Exemption may be required.
- 21.2 An Exemption cannot be given where this would contravene the Public Contracts Regulations 2015, the Concession Contracts Regulations 2016 or any other legislation.
- 21.3 Exemptions will only be considered in exceptional circumstances namely:
- (a) Proprietary or patented goods or services are proposed to be purchased which are only obtainable from one person and it can be demonstrated that no reasonably satisfactory alternative to those proprietary or patented Goods or Services is available;
  - (b) No genuine competition can be obtained in respect of the purchase of particular Goods, Services or execution of Works;
  - (c) The Services or execution of Works are of such a specialist nature that they can only be carried out by one person (e.g. statutory undertakers);
  - (d) Goods are proposed to be purchased by or on behalf of the Council at a public auction;
  - (e) Goods or Services are proposed to be purchased which are of a specialist or unique nature (such as antiquities for museums or a particular performance artist);
  - (f) Repairs or parts if the only option is to repair or buy new parts for existing equipment or buildings, and there is only one supplier;
  - (g) To comply with a change in legal requirements;

- (h) The Contract is for Goods, Services or the execution of Works which are required in circumstances of extreme urgency for example where immediate repairs are required to buildings, structures and other assets damaged by fire, bad weather or vandalism;
- (i) The provision of a service is urgently required because of the failure of a Contractor through unsatisfactory performance or the appointment of an administrator, receiver or liquidator to administer its affairs. The Contract should be re-let at the earliest opportunity in compliance with these Rules;
- (j) Where an extension for a particular period can be justified, for example where a service review includes the intention to co-terminate relevant Contracts within a reasonable period; or
- (k) Where fewer than the required numbers of Tenders have been received and it is considered unlikely that a further tendering exercise will result in more Tenders being received.

#### 21.4 Procedure for Exemptions

- 21.4.1 To apply for an Exemption a Modern.gov report must be completed and signed by either the Deputy Chief Executive or Strategic Director who does not have direct line management responsibility for the service seeking the exemption.
- 21.4.2 The Modern.gov report must provide full details of the request and any supplementary documentation to support the request and refer to the specific ground for the Exemption.
- 21.4.3 No commitment should be made to a potential Contractor prior to authorisation.
- 21.4.4 The Head of the Commercial Procurement Unit is responsible for ensuring that a complete record of all Exemptions is maintained. A copy of the signed delegated/Cabinet decision approving an Exemption and the reasons for it must be forwarded to the Commercial Procurement Unit at [strategic.sourcing@oldham.gov.uk](mailto:strategic.sourcing@oldham.gov.uk)
- 21.4.5 In circumstances of extreme urgency, the relevant decision maker in 21.3 (h) & (i) above, may authorise an Exemption in writing without the need to complete a Modern.gov report. As soon as practicable a Modern.gov report must be submitted and approved in accordance with this Rule.
- 21.4.6 The written authorisation must be provided in accordance with this Rule 21.4.5 and must be stored electronically on The Chest.

21.5 All Exemptions granted will be reported to the Audit Governance and Improvement Review Committee as part of the Annual Procurement and Commissioning Report.

21.6 A direct award following an exemption should comply in all other respects with the Council's Contract Procedure Rules and the Council's terms and conditions of contract should be used.

21.7 The Council cannot use an exemption to depart from EU Procurement Rules and a Voluntary Transparency Notice may be required to inform the market of a direct award.

## **22. DECLARATIONS OF INTEREST and ANTI-BRIBERY and CORRUPTION**

22.1 The Council's reputation with regards to Procurement activity is important and should be safeguarded from any imputation of dishonesty or corruption. All elected Members of the Council and Officers are reminded of their responsibilities in relation to gifts, hospitality and any conflicts of interest and should ensure that they comply with the obligations set out in the Council's Members' Code of Conduct and the Officers' Code of Conduct respectively and any other relevant policies, guidance or strategies relating to bribery, fraud and corruption issued or endorsed by the Council from time to time.

22.2 Any Officer or Member must declare any interest which could influence their judgement in relation to Procurement activity in accordance with the Council's Codes of Conduct.

22.3 No gifts or hospitality should be accepted from any Bidders involved in Procurement activity except in accordance with the Council's Codes of Conduct. Relevant interests, gifts and hospitality should be registered on the Council's e-register.

## **23. DEFINITIONS**

Within the Contract Procedure Rules, the following definitions are used:

23.1.1 "Concession" means a contract under which a contracting authority outsources works or services to a contractor or provider, who then has the right to commercially exploit those works or services in order to recoup its investment and make a return on the proviso that the contractor or provider bears the operating risk and has no guarantee of recouping its investment or operating costs.

23.1.2 "Contract" means an agreement in writing for consideration (money or money's worth) between the Council and a Contractor for the provision of Goods, Works or Services by the Contractor or the granting of a Concession;

23.1.3 "Contractor" includes any sole trader, partnership or company (limited or unlimited) or any duly incorporated trade, consortiums or unincorporated bodies, professional or commercial body or voluntary body; (although the Council must only contract with legal entities)

23.1.4 "Contracts Register" means a comprehensive list of all term/framework Contracts that the Council procures, detailing key attributes such as type, term, value and Contractor and Procurement/ Directorate contact details;

23.1.5 "Contract Value" means the amount the Council pays to the Contractor under the Contract excluding VAT;

- 23.1.6 “Director of Finance” means the Chief Officer designated under section 151 Local Government Act 1972 or his/her nominated representative;
- 23.1.7 “Director of Legal Services” means the Council’s Principal Solicitor;
- 23.1.8 “E-auction” is a means of carrying out purchasing negotiations via the Internet. It is a real time event that occurs online, allowing multiple Contractors in different geographic regions to place bids and modify simultaneously;
- 23.1.9 “E-procurement System” means Council’s e-tendering portal, The Chest (or equivalent);
- 23.1.10 “EU Procurement Regulations” means the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016 and such other UK regulations implementing its provisions as may be made from time to time.
- 23.1.11 “Grant” means an award of money from the Council to another organisation for the purpose of giving a benefit to a third party which is not a Service for the Council. A grant can be made subject to conditions and the grant can be clawed back if the conditions are not met.
- 23.1.12 “Finance Management System” means the Council’s electronic purchasing and payments system, AGRESSO (or equivalent);
- 23.1.13 “Framework Agreement” means an agreement which allows the Council to execute Call-Off Orders for Services, Goods or Works from a Contractor in accordance with the terms of the agreement and includes Dynamic Purchasing Systems;
- 23.1.14 “Goods” covers an item(s) of equipment, materials, software or other similar object, whether inanimate or electronic, to be supplied or delivered by the Contractor and procured by Oldham Council and includes any documentation;
- 23.1.15 “Invitation to Tender” means a request for Contractors to submit a Tender to supply Goods, execute Works or provide Services at specified charges or rates of charges;
- 23.1.16 “Modification” means any variation to a Contract;
- 23.1.17 “Most Economically Advantageous” means that criteria including the period from completion or delivery, quality, aesthetic and functional characteristics, technical merit, after sales service, technical assistance, ease of maintenance and charges may be used as part of the evaluation of a Tender;
- 23.1.18 “Open Procedure” means a procedure for inviting Tenders by advertisement in which Tenders are sent to all Contractors who express an interest in Tendering;
- 23.1.19 “Officer” includes any employee of the Council;
- 23.1.20 “Pre-Procurement Approval Form” means the template form issued by the Commercial Procurement Unit
- 23.1.21 “Procurement” means the process leading to the award of a Contract;
- 23.1.21 “Purchasing Consortia” means an organised and constituted body of individuals who jointly participate in the Procurement and award of a Contract;
- 23.1.23 “Quotation” means a formal offer to supply Goods, execute Works or provide Services at specified charges or rates of charges;

- 23.1.24 “Restricted Procedure” means a procedure for inviting Tenders where Contractors have been pre-qualified before being invited to submit a Tender;
- 23.1.25 “Scheme of Delegation” means the document described as such within the Constitution;
- 23.1.26 “Service” includes services for the provision of labour, advice, care and support services for people, installation, implementation, testing, management services (including project and programme management and consultancy services), maintenance, repair and support services;
- 23.1.27 “SRM” or “Strategic Relationship Management” is a comprehensive approach to Procurement managing and capturing the in life Contract value from key business relationships. SRM contributes to strategic procurement through collaboration;
- 23.1.28 “Tender” means a formal offer to supply or purchase Goods, execute Works or provide Services at a stated price or offer to be granted a Concession;
- 23.1.29 “Tenderer” shall mean any firm submitting a Tender;
- 23.1.30 “Tender Register” means a register of Tenders received in response to an advertised opportunity containing the information prescribed by the Contact Procedure Rules;
- 23.1.31 “Variation” means a change, amendment, variation or modification of the terms and conditions of a Contract;
- 23.1.32 “Works” means the carrying out of construction or undertaking of engineering or other practical work, which normally requires the provision of labour services and materials to build, construct or physically provide parts of Services during a project implementation period.