



Part 4G

Contract Procedure Rules

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Note: All references to Council posts in these Contract Procedure Rules shall be read as a reference to the equivalent post at the relevant point in time

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 and Call-Off Contracts for the procurement of Supplies, Works, Services or Concessions made in the name of the Council. 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, the Unity Partnership Limited and the Miocare Group. For the avoidance of doubt, in instances of pooled funds arrangements made under section 75 of the National Health Service Act 2006 and the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 the lead commissioning organisation’s rules will take precedence.
- 1.3 Every Contract and Call-Off Contract entered into by the Council shall be entered into pursuant to or in connection with the Council’s functions and shall comply with:
 - 1.3.1 all relevant statutory legislation and provisions and in particular the Procurement Regulations and any relevant case law;
 - 1.3.2 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
 - 1.3.3 the Council’s strategic objectives and policies including, amongst others, the Corporate Plan.
- 1.4 These Contract Procedure Rules apply to all Contracts and Call-Off Contracts awarded by the Council for Supplies, Works, Services or Concessions, regardless of the source of funding for the Contract or Call-Off Contract. They apply to procurement by any form of official Council purchase order and equally to Contracts and Call-Off Contracts awarded by any person, firm or body on the Council’s behalf.
- 1.5 No Contract or Call-Off Contract shall be entered into unless those relevant officers specified in the Scheme of Delegation at Part 3 of the Council’s Constitution are satisfied that there is adequate budget provision and all necessary consents to the expenditure have been obtained.
- 1.6 Where a Contract or Call-Off Contract involves the making of a Key Decision as defined in Part 2, Article 14.3.2 -14.3.3 of the Constitution, those relevant officers specified in the Scheme of Delegation at Part 3 of the Council’s Constitution shall ensure that the Director of Legal Services and the Director of Finance are consulted throughout the procurement process.
- 1.7 It shall be a condition of any Contract or Call-Off Contract between the Council and any persons (not being Officers of the Council) who are required to

supervise a Contract or Call-Off Contract on the Council's behalf, that in relation to such Contract or Call-Off Contract, those persons shall comply with the requirements of these Contract Procedure Rules as if they were Officers of the Council.

- 1.8 These Contract Procedure Rules shall not apply to:
 - 1.8.1 Contracts of employment.
 - 1.8.2 Contracts for direct payments or for personal social or health care or educational need where neither a quotation or tender procedure are, in the opinion of the Deputy Chief Executive, or Managing Director (following consultation with Director of Legal Services) viable methods of procurement in the circumstances.
 - 1.8.3 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 which would amount to a Works contract and must be procured in accordance with these Rules.
 - 1.8.4 Contracts for supplies to be purchased at auction and where 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.
 - 1.8.5 Contracts for the use of counsel or other legal representation where the Director of Legal Services considers that a Procurement exercise would not protect or support the Council's interests. All contracts for the use of counsel or other legal representation must be commissioned and/or approved by The Director of Legal Services.
 - 1.8.6 Contracts for works of art or theatre, which are genuinely exclusive.
 - 1.8.7 A Call-Off Contract made under a legally compliant Framework Agreement which has been procured correctly and where the Council is a named Contracting Authority (see Rule 8).
 - 1.8.8 The sale or provision of Supplies, Works or Services delivered by the Council as traded services.
 - 1.8.9 Grants received by the Council and Grants distributed by the Council provided the Grant received by the Council does not require the Council to procure Supplies, Works or Services.
- 1.9 Any failure to comply with any of the provisions of these Contract Procedure Rules shall be reported to the Head of Commercial Procurement Unit who will refer the matter to the Director of Legal Services or the Director of Finance, as appropriate and the officer. A breach of these Rules may result in disciplinary action.
- 1.10 The relevant officer referenced in Rule 1.9

shall, where appropriate, take immediate action in the event of a failure to inform the appropriate Director who will consider and determine the appropriate action.

- 1.11 Any dispute regarding the application of these Contract Procedure Rules shall be referred to the Directors of Finance and Legal Services for advice.
- 1.12 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.
- 1.13 Persistent breach of the Contract Procedure Rules will also be reported to the Audit Committee.

2. COMMISSIONING AND PROCUREMENT PLANNING

- 2.1 Prior to the start of each financial year, the Council shall create a strategic procurement forward plan in consultation with the Head of the Commercial Procurement Unit and members of the Legal Services team setting out its current Contracts and Call-Off Contracts and Contracts and Call-Off Contracts to be procured for the forthcoming financial year. The procurement pipeline should be refreshed at intervals as the need arises. 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 shall, where appropriate, 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 where appropriate, 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 shall 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 shall, where appropriate, consider its obligations with regard to data protection under the UK General Data Protection Regulation and the Data Protection Act 2018 as amended from time to time and in particular its responsibilities and that of the Contractor 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 shall, where appropriate, ensure that any collaborative arrangements/agreements with other public bodies to procure Supplies, Works or Services comply with the Procurement Regulations and ensure value for money and that the Council’s interests are fully protected.

- 2.6 As permitted by the Procurement Regulations, soft market testing may be undertaken 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 available to all Tenderers that has been made available at a pre-procurement stage.
- 2.8 The Contract Owner is responsible for the full commissioning cycle including contract management and must ensure the Council enters into a legally binding Contract or Call-Off Contract with the Contractor prior to the provision of the Supplies, Works or Services. The Contract Owner must ensure that the Contract or Call-Off is signed and lodged with the Commercial Procurement Unit where the value of the Contract is £10,000 and over.

3. CALCULATION OF CONTRACT VALUE

- 3.1 The estimated value of a Contract or Call-Off Contract shall be the total consideration payable, including Value Added Tax (where applicable), which the Council expects to be payable under the Contract or Call-Off Contract and shall be calculated in accordance with Rule 3.2 below.
- 3.2 The total Contract Value shall be calculated as follows:
 - 3.2.1 Where the Contract or Call-Off Contract is for a fixed period, by taking the total price to be paid during the lifetime of the Contract or Call-Off Contract or the price which might be paid during the whole of the period including any permitted extension.
 - 3.2.2 Where the term of a Contract or Call-Off Contract is indefinite or uncertain, by taking the monthly price payable under the Contract multiplied by 48.
 - 3.2.3 In relation to a compliant Framework Agreement with no guaranteed commitment, the Contract Value will be the estimated value of the Supplies, Works or Services over the full duration of the Framework Agreement.
 - 3.2.4 Where the Contract may have a value above the Procurement Regulations threshold, for procurement purposes the Contract Value must be calculated inclusive of VAT.
- 3.3 Under the Procurement Regulations, Contracting Authorities may divide tender opportunities into smaller lots to encourage small and medium sized business enterprises to submit bids and must provide reasons for not doing so. The cumulative value of the individual lots will form the total Contract Value. If the Council chooses not to divide tender opportunities into smaller lots, it will record a reason for not doing so, and this record will be held by the Commercial Procurement Unit.

3.4 A Contract Value shall 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, Call-Off Contract, 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 relevant tender procedures. 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.

| Contract Value | Procurement Activity | Instructions | Minimum Requirement for Advertising the Opportunity |
|---|--|---|---|
| Less than £10,000 for Supplies, Works and Services | 1 Written Quotation. | Service Area to obtain at least 1 written Quotation specifying that the Council's terms and conditions will apply following the instructions in Rule 5.1 below and file ready for audit inspection. Local Supply Chain including SMEs to be considered where practical. | N/A |
| Between £10,000 and £24,999 for Supplies, Works and Services | Approach a minimum of 3 organisations for a written Quotation. | Service Area to contact the Commercial Procurement Unit who will conduct an 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 Contractor (where practical) to be included. | The Chest |

| | | | |
|--|--|---|---|
| Between £25,000 and £99,999 for Supplies, Works and Services | Open Request for Quotations or for the completion of a compliant framework arrangement | Service Area to contact the Commercial Procurement Unit who will conduct an 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 Contractor (where practical) to be included. | The Chest and Contracts Finder |
| Between £100,000 and Procurement Regulations threshold for Supplies, Works and Services | Formal Open Tender Process or for the completion of a compliant framework arrangement | Service Area to contact the Commercial Procurement Unit who will conduct an appropriate procurement procedure to follow in accordance with these Contract Procedure Rules and facilitate the process using the Council's E-Procurement System (The Chest). | The Chest and Contracts Finder |
| Procurement Regulations threshold and above for Supplies, Works and Services | Full Procurement Regulations compliant Procedure | Service Area to contact Commercial Procurement Unit who will conduct an appropriate procurement procedure, in compliance with the Procurement Regulations, and follow and facilitate the process using the Council's E-Procurement System (The Chest) and Contracts Finder. | Open advert mandated in Find a Tender Service and Contracts Finder with the exception of Framework Call-Off competitions. |

4.4 The rules relating to the required process and timescales shall be observed for all Contracts as shall the principles of the Procurement Regulations. The procurement process needs to be conducted in accordance with the principles of equal treatment, non-discrimination, transparency, mutual recognition, proportionality, competition, the protection of legitimate expectations, the requirement to act without manifest error and good administration – which underpin the Procurement Regulations.

5. QUOTATION PROCESS

5.1 Full written Quotation(s) below £10,000 shall be obtained from Contractor(s) pursuant to the procedure set out in the table in Rule 4.3 before a formal purchase order and or Contract can be issued. A formal purchase order and or Contract shall be issued after the Quotation(s) have been received and shall specify the Supplies, 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 terms and conditions of contract (either by inclusion on the purchase order or Contract or by reference).

- 5.2 Requests for Quotations of £10,000 or above for Supplies, Works and Services must be advertised on the Council's E-procurement system (The Chest) and any Requests for Quotations of £25,000 and above must also be advertised on Contracts Finder.
- 5.3 At least one local Contractor should be included in each Request for Quotation, where possible.
- 5.4 The standard Council templates for Quotations shall be utilised for all Procurement activity and these are held by the Commercial Procurement Unit.
- 5.5 All Quotation(s) sought shall be recorded in writing for audit purposes via the Council's E-procurement system (The Chest).

6. TENDER PROCESS – Below Public Contracts Regulations Thresholds

- 6.1 All Procurement opportunities should be advertised via the Council's e-procurement system (The Chest) and Contracts Finder (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 Contract or Call-Off terms and conditions which will apply;
 - 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 Procurement Regulations Thresholds

- 7.1 Where an estimated Contract Value exceeds the current Procurement Regulations' Thresholds, the Contract shall be tendered in accordance with the Procurement Regulations. Under the Public Contract Regulations 2015, the Contract may be Tendered under Open, Competitive Dialogue, Competitive Procedure with Negotiation or Innovation Partnerships Procedure. Under the Concession Contracts Regulations 2016 the Council shall have the freedom to organise the procedure, subject to compliance with the Regulations
- 7.2 A Contract Notice in the prescribed form must be published in Find a Tender in order to invite Tenders and a Prior Information Notice may be used to invite Expressions of Interest.
- 7.3 All Find a Tender notices shall be published by the Commercial Procurement Unit.
- 7.4 **Competitive Procedures**

- 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 Tenderers will have a major role in defining the solution or where an Open Procedure may not deliver the expected outcomes.
- 7.4.2 A Competitive Dialogue procedure or a Competitive Procedure with Negotiation allows the Council to negotiate proposed solutions with Tenderers 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 the 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 or a Competitive Procedure with Negotiation.

7.5 Concession Contract

- 7.5.1 A Concession governed by The Concession Contracts Regulations 2016 must be advertised in accordance with the Regulations and the value of the concession must be calculated in accordance with Regulation 8. As such there are certain procedural guarantees which must be met; award criteria must be published in descending order of importance and the tender evaluation made in accordance with them; minimum time limits for the receipt of tenders and the mandatory and discretionary exclusion criteria must be applied. A Find a Tender notice must be published for over threshold tenders.

8 COMPLIANT FRAMEWORK AGREEMENTS

8.1 CALL-OFF CONTRACTS

- 8.1.1 Where an appropriate compliant Framework Agreement is recommended by the Commercial Procurement Unit, that has been established by a consortium, collaboration, the Council or other public body, the Council may consider using this compliant Framework Agreement to place an order (Call-Off) if:
- (a) the Framework 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 in the original advertisement.

- (c) a detailed evaluation of the opportunities and risks associated with the Framework Agreement as detailed in 8.1.2 has been undertaken and agreed by the Monitoring Officer and the Director of Finance.

8.1.2 Before undertaking a Call-Off under any compliant Framework Agreement, thorough due diligence should be undertaken and advice sought from the Commercial Procurement Unit, the Finance Service, the Human Resources Service and Legal Services to confirm the following (as a minimum):

- the Council is a named Contracting Authority in the original advertisement,
- the compliant Framework Agreement is in place and binding,
- the compliant Framework Agreement is still valid,
- the estimated Contract Value in respect of the proposed Call-Offs that would be made under the compliant Framework Agreement,
- that the maximum aggregate spend under the Framework Agreement has not been reached,
- that the Call-Off terms and conditions are fit for purpose,
- a copy of any User Guide / any other documentation is available.

8.1.3 Call-Off Contracts must be awarded based on the evaluation criteria identified in the compliant Framework Agreement.

8.1.4 Where the Call-Off is undertaken via a direct award process (which is prescribed in the compliant Framework Agreement), in advance of executing a Call-Off Contract the Contractor must be requested, in writing, to supply confirmation, that is verified by the Council, that it can meet the requirements of the Council in accordance with the relevant terms and conditions and the pricing established in the compliant Framework Agreement. All direct awards without competition should be reported to the Audit Committee on an annual basis.

9. TENDER DOCUMENTATION

9.1 Save where a mini competition is to be carried out under another Contracting Authority's Framework Agreement, the standard Council templates for Tendering shall be utilised for all Procurement activity for Tenders of £10,000 or above.

9.2 As a minimum, Tender documents shall include details of the Council's requirements for the particular Contract or Call-Off Contract including, but not limited to:

- 9.2.1 a description of the Supplies, 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 the timetables prescribed by the Procurement Regulations;
- 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 (where a compliant Framework Agreement is to be used, the Call-Off Contract shall be included)
- 9.2.6 the evaluation criteria to be used, including Social Value and including any weightings as considered appropriate;
- 9.2.7 payment schedule and terms and instructions for completion;
- 9.2.8 whether TUPE may apply (if applicable);
- 9.2.9 the pension arrangements for existing/former Council employees (if applicable);
- 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 appropriate terms and conditions for Supplies, Works, Services or Concessions (as relevant) or, where a compliant Framework Agreement is used, the applicable Call-Off terms and conditions. The Invitation to Tender or Quotation documentation shall state that the Contract which terms and conditions or Call-Off terms and conditions will apply, and these shall be available via Legal Services. Purchase Orders shall refer to the applicable terms and conditions.
- 10.2 All written Contracts and Call-Off Contracts shall include the Council's minimum requirements for insurance cover namely:
 - Public Liability Insurance - £10m
 - Employer's Liability Insurance - £5m and
 - Professional Indemnity Insurance - £2m (if applicable)

except where a compliant Framework Agreement is used; in which case the levels of cover specified in the compliant Framework Agreement shall apply.

Any departure from the agreed thresholds must be approved by the Assistant Director of Corporate Governance and Strategic Financial Management.

- 10.3 Any bespoke contractual terms and conditions required shall be confirmed by Legal Services prior to issuing as part of the Tender process.
- 10.4 All Contracts and Call-Off Contracts shall be documented before the Supplies, Works or Services are provided and shall include the following, as a minimum:
 - 10.4.1 every Contract or Call-Off Contract shall, as a minimum, unless there is good and sufficient reason to the contrary (or except where a compliant Framework Agreement is used; in which case the compliant Framework Agreement shall apply), require that all Supplies, Works or Services and all workmanship shall, if applicable, be in accordance with the relevant standard or equivalent International standard without prejudice to any higher standard required by the Contract or Call-Off Contract.
 - 10.4.2 a clause empowering the Council to cancel or terminate the Contract or Call-Off Contract, if the Contractor offers an inducement or reward in relation to the procurement of any Contract or Call-Off Contract by the Council, to exclude the Contractor from the tender, under mandatory grounds or discretionary grounds for a serious infringement of the Procurement Regulations, 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 must be transmitted by electronic means in accordance with the advice of the Head of Commercial Procurement Unit. Quotations and Tenders shall be submitted by electronic means e.g., the E procurement system (The Chest).
- 11.1.2 Evidence that the transmission was successfully completed is obtained and recorded.
- 11.1.3 Electronic Tenders are kept in a separate secure folder in The Chest or equivalent system and cannot be opened until the deadline has passed for receipt of Tenders.
- 11.1.4 A member of the Commercial Procurement Unit, who is not responsible for the procurement exercise, will open all requests for Quotations or bids received under a compliant Framework Agreement with a value in excess of £10,000.

12. PRE AND POST TENDER CLARIFICATIONS

- 12.1 Pre-tender clarifications can be provided to potential or actual Tenderers. All responses should be published on The Chest and communicated to all concerned.
- 12.2 Post tender clarifications may be undertaken with tenderers provided the Council ensures equal treatment of all participants and specifies and applies a process for post tender clarifications in the Invitation to Tender and ensures that no Tenderer is given an advantage over any other Tenderer. For the sake of clarity, any clarifications on the commercial element of a bid must not change the original price offer. This includes verifying abnormally low bids where specific legal advice is required.
- 12.3 All pre and post tender clarifications must be conducted via The Chest. All communication must be documented and retained on The Chest.
- 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 Procurement Regulations, 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 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 procurement lead from within the Commercial Procurement Unit shall ensure that a representative from Finance is involved in the evaluation of tenders and that, where deemed appropriate by the Head of the Commercial Procurement Unit, Legal Services is consulted regarding the evaluation process for procurements in excess of £1 million.
- 13.3 The procurement lead of the evaluation team must ensure that no member of the evaluation team has a conflict of interest and completes the appropriate documentation.
- 13.4 The procurement lead must ensure that each bid is compliant and that the tenderer is not excluded from bidding under any of the mandatory or discretionary grounds listed in the Procurement Regulations.
- 13.5 The evaluation criteria shall be predetermined and approved by the procurement lead 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 award procedure.
- 13.6 All Tenders shall be awarded on the basis of being the “Most Economically Advantageous”.

13.7 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 – all scores and calculations should be checked 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.

13.8 Tenderers shall be given written feedback regarding their bid in accordance with the Procurement Regulations.

14. AWARDING CONTRACTS AND CALL-OFF CONTRACTS

14.1 All Contracts subject to these Contract Procedure Rules 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:

| Contract Value | Awarded By | Decision Recorded on |
|--------------------------------------|---|--|
| Less than £10,000 | Authorised Officer (as per Departmental Scheme of Delegation) | Related spend is recorded (Purchase Order) via Finance Management System (Agresso) |
| Between £10,000 and £99,999 | Authorised Officer (as per Departmental Scheme of Delegation) | Related spend is recorded (Purchase Order) via Finance Management System (Agresso), The Chest, Modern Governance System and Find a Tender/Contracts Finder for Contracts and Call-Off Contracts with a value over £25,000.00. |
| Between £100,000 and £399,999 | Executive Member in consultation with the Deputy Chief Executive, Assistant Chief Executive, Executive Director for Place and Economic Growth, Managing | The Chest Modern Governance System and Find a Tender/Contracts Finder and the Key decision document for Contracts with a value of £250,000 plus |

| | | |
|-------------------------|--|--|
| | Directors and Directors (as relevant) | |
| £400,000 or over | Cabinet or Sub-Committee including Commissioning Partnership Board | The Chest, Modern Governance System, Find a Tender/Contracts Finder and the Key Decision Document |

N.B The Unity Partnership has a separate approval process which follows the same threshold limits as the Council. See below:

| <u>Contract Value</u> | Awarded by |
|--|-------------------|
| Less than £100,000 | Director |
| Greater than £100,000 but less than £400,000 | Director |
| Greater than £400,000 | Director |

- 14.2 No Contract or Call-Off 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 £25,000 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 procurement lead within the Commercial Procurement Unit to upload on The Chest. Spend below £25,000 shall be approved in writing by the Officer with delegated approval.
- 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 Director of Finance having ensured compliance with the Financial Procedure Rules.
- 14.4 Once the decision to award a Contract is made, each Tenderer must be notified in writing of the outcome. All Tenderers must be notified simultaneously and as soon as possible of the intention to award the Contract to the successful Tenderer(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.

- 14.5 A Contract award letter will be sent to the successful Tenderer(s) containing all relevant information, including all information prescribed by the Procurement Regulations, where relevant.
- 14.6 A Contract which has a Contract Value above the Procurement Regulations thresholds can only be awarded after a notice of the proposed award has been given to all unsuccessful Tenderers and the 10 day standstill period has elapsed from the day after the date upon which 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.
- 14.7 A Contract award notice must be published in Find a Tender 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 Procurement Regulations threshold. A Contract award notice must also be published on Contracts Finder.
- 14.8 Save for Call-Off Contracts for personal social or health care or educational need where the overarching Framework Agreement has been sealed, Contracts for Supplies, Services or Works and any other contracts, including but not limited to Grant Agreements, Deeds of Variation, Deeds of Novation and Deeds of Assignment with a Contract Value of £100,000 or more shall be executed by deed and attested by no less than one authorised sealing officer within Legal Services.
- 14.9 Contracts for Supplies, Services or Works and any other contracts, including but not limited to Grant Agreements, agreements to vary, novate or assign together with Call-Off Contracts for personal social or health care or educational need and with a Contract Value of less than £100,000 shall be executed by no less than one officer of the Council with delegated authority to sign a Contract or contractual document under the Council's Officer and Executive Member Scheme of Delegation.
- 14.10 Reasonable endeavours shall be used to ensure that performance of a Contract does not commence before the Contract is executed.
- 14.11 All Contracts over £5,000 shall be published on and embedded in the Council's Contracts Register maintained by the Commercial Procurement Unit.
- 14.12 Where approved by the officer with delegated approval to sign or an authorised sealing officer within Legal Services or the Director of Finance, Contracts and Call-Off Contracts for Supplies, Services or Works and any other contracts, including but not limited to Grant Agreements, agreements to vary, novate or assign with a Contract Value of less than £100,000 may be executed using the electronic signature of an officer of the Council authorised under the Council's Officer and Executive Member Scheme of Delegation or by such authorised officer using an e-signature via appropriate and secure digital signature software.
- 14.13 Contracts for Supplies, Services or Works and any other contracts, including but not limited to Grant Agreements, agreements to vary, novate or assign may be executed by a contractor using an electronic signature or by using an e-signature via appropriate and secure digital signature software.

15. FINANCE MANAGEMENT SYSTEM

- 15.1 The Council's Financial Management System (Agresso), or equivalent, shall be used to process all orders with Contractors. This includes all orders processed after Quotations are received or a Tender process has been undertaken.
- 15.2 To set up a new Contractor, the guidance that is available to all officers (on the intranet) should be followed.

16. LIQUIDATED DAMAGES AND RETENTIONS

- 16.1 The Director of Finance and the Director of Legal Services shall advise as to the appropriate degree of security (if any) required to protect the Council from a Contractor default prior to the invitation to tender. Liquidated damages clauses should always be used in a Contract or Call-Off Contract where appropriate.
- 16.2 A retention sum (appropriate to the circumstances of the Contract or Call-Off Contract) should be written into the terms and conditions of any Contract or Call-Off Contract for Works with a Contract Value of over £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 or Call-Off 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 Call-Off Contract;
 - (b) the Modification is for additional Supplies, Works and Services by the original Contractor that have become necessary and were not included in the initial procurement or commissioning exercise, 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, and
 - (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; and
 - (ii) the Modification does not alter the overall nature of the Contract or Call-Off Contract;
- (d) where a new Contractor replaces the one to which the Council had initially awarded the Contract or Call-Off 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 or Call-Off Contract;
- (e) provided that the proposed Modification, irrespective of its value, is not substantial within the meaning of Rule 17.2.

17.2 A Modification of a Contract or Call-Off Contract 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 Call-Off Contract 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 Call-Off Contract in favour of the Contractor in a manner which was not provided for in the initial Contract or Call-Off Contract;
- (d) the Modification extends the scope of the Contract or Call-Off Contract considerably;
- (e) a new Contractor replaces the one to which the Council had initially awarded the Contract or Call-Off Contract in cases other than those provided for in Rule 17.1(d)
- (f) the Modification increases the contract value for Supplies or Services by more than 10% and for Works by 15%.

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 or Call-Off Contract under Rules 17.1 (b) and (c) with a value over the relevant procurement threshold shall, where required, be published in the Find a Tender in accordance with the Procurement Regulations.

18. TERMINATION OF CONTRACTS AND CALL-OFF CONTRACTS

18.1 Prior to any action being taken, the Director of Legal Services shall be consulted with regard to any proposed termination of any Contract or Call-Off Contracts.

19. CLAIMS ARISING FROM CONTRACTS OR CALL-OFF CONTRACTS

19.1 Officers shall inform the Head of the Commercial Procurement Unit immediately of any claims (or anticipated claims) by or against a Contractor that are the subject of a dispute between the Council and the Contractor, and the Head of the Commercial Procurement Unit shall inform and consult with the Director of Legal Services to agree a course of action.

19.2 Claims arising in respect of matters not clearly within the terms of any existing Contract shall be determined by the Deputy Chief Executive, the Assistant Chief Executive, a Managing Director or a Director (as appropriate) after having taken the advice of the Director of Legal Services and the Director of Finance.

19.3 Where completion of the supply of Works, Supplies or Services under a Contract or Call-Off Contract are likely to be delayed, resulting in claims under the Contract or Call-Off Contract, Officers shall inform the Head of the Commercial Procurement Unit immediately, and the Head of the Commercial Procurement Unit shall inform and consult with the Director of Legal Services to agree a course of action.

20. MONITORING CONTRACTS AND CALL-OFF CONTRACTS

20.1 All Contracts and Call-Off Contracts must have a Contract Owner.

20.2 The Contract Owner will be responsible for the whole of the commissioning, cycle including completing the governance and legal formalities, reviewing, monitoring and evaluating the Contract or Call-Off Contract to ensure that its provisions and the Supplies, Works or Services or (or Concession) within it are being followed and performed as they should be. The Contract Owner shall understand the Specification, contractual terms and the performance framework and must manage activity ensuring that Contracts and Call-Off Contracts do not require any extensions beyond the permitted or planned expiry.

20.3 During the life of the Contract or Call-Off Contract, the Contract Owner will monitor the Contract or Call-Off Contract in respect to the following, as a minimum:

- (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 the terms and conditions of Contract or Call-Off 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 or Call-Off Contract are identified and managed and any risk registers are kept up to date;
- (f) safeguarding where appropriate; and
- (g) user satisfaction.

20.4 The final certificate for payment for any Contract or Call-Off Contract for the delivery of Works shall not be paid until the Contract Owner has performed a reconciliation of all Works completed against the approved costs of the scheme.

20.5 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 or Call-Off Contract and no waiver of such sum or damages may be given without the approval of the Director of Legal Services and the Director of Finance.

- 20.6 Where a Contractor is in breach of its performance of a Contract or Call-Off Contract, a default notice should be issued under the terms and conditions of the Contract or Call-Off Contract to enable the Council to exercise its discretion to claim damages and/or terminate the Contract or Call-Off Contract and exclude the tenderer from any future tender process.
- 20.7 Where the Contract is to be re-let, any information gathered by the Contract Owner shall be available to inform the approach to re-letting the next Contract or Call-Off Contract.
- 20.8 The Contract Owner shall provide advice and support, as required, on good practice in performance management of Contracts and Call-Off Contracts.
- 20.9 All Contracts and Call-Off 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 commissioning officers to inform the Commercial Procurement Unit.

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. 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 Procurement Regulations or any other legislation.

21.3 Exemptions will only be considered in exceptional circumstances, including but not limited to:

(a) Proprietary or patented Supplies or Services are proposed to be purchased which are only obtainable from one entity and it can be demonstrated that no reasonably satisfactory alternative to those proprietary or patented Supplies or Services is available;

(b) No genuine competition can be obtained in respect of the purchase of particular Supplies, 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 entity (e.g., statutory undertakers);

(d) Supplies are proposed to be purchased by or on behalf of the Council at a public auction;

(e) Supplies or Services are proposed to be purchased which are of a specialist or unique nature (such as a particular performance artist or antiquities for museums);

(f) Repairs or parts if the only option is to repair or buy new parts for existing Supplies, equipment or buildings, and there is only one Contractor;

(g) To comply with a change in legal requirements;

(h) The Contract is for Supplies, 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 Supplies, Works or Services 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 continued provision of Supplies, Works or Services is required for an additional period and this can be justified, for example where a service review includes the intention to co-terminate relevant Contracts within a reasonable period

with all exceptional circumstances to be objectively evidenced in the exemption request to enable the decision maker to reach an informed and reasonable decision in the circumstances.

21.4 Procedure for Exemptions over £10,000

21.4.1 To request an exemption from these Contract Procedure Rules, a Modern.gov report must be completed seeking approval for the exemption and authorisation for any expenditure. It must be signed only by those authorised to award a Contract under Rule 14.1.

21.4.2 An exemption request can be authorised by the Deputy Chief Executive, the Assistant Chief Executive, the Executive Director or a Managing Director who does not have direct line management responsibility for the service.

21.4.3 The Modern.gov report must provide full details of the request and any supplementary documentation to support the request and evidence the specific ground for the exemption.

21.4.4 No commitment should be made to a potential Contractor prior to authorisation.

21.4.5 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 lead.

21.4.6 In circumstances of extreme urgency, the relevant decision maker utilising Rule 21.3 (h) or (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.

21.4.7 The written authorisation must be provided in accordance with this Rule 21.4 and must be stored electronically on The Chest.

21.5 All Exemptions reports require comments from the Assistant Director of Corporate Governance and Strategic Financial Management.

21.6 A direct award of a Contract 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 where possible.

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

21.8 Where an Exemption is granted, the Contract shall still be made subject to the Council's standard terms and conditions where possible and in accordance with any relevant requirements detailed in Rule 10.1. Any amendments required to the Council's standard terms and conditions shall be approved by Legal Services prior to issuing as part of the procurement process. Legal Services will review and draft the terms and conditions for any bespoke contracts.

21.9 On an annual basis, the record of authorised exemptions maintained by the Head of the Commercial Procurement Unit, should be reported to the Audit Committee for review.

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 Tenderers 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

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

23.1.1 "Call-Off Contract" means a contract which is entered into under a Framework Agreement in accordance with the terms and conditions of that Framework Agreement

23.1.2 "Concession" means a contract under which a contracting authority outsources Supplies, Services or Works to a Contractor or provider, who then has the right to commercially exploit those Supplies, Services or Works 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

23.1.3 "Contract" means an agreement in writing for consideration (money or money's worth) between the Council and a Contractor for the provision of Supplies, Works or Services by the Contractor or the granting of a Concession, including a compliant Framework Agreement

23.1.4 "Contracting Authority" has the meaning set out in the Public Contracts Regulations 2015;

23.1.5 "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)

- 23.1.6 “Contract Owner” means the lead stakeholder or commissioner for the proposed contract
- 23.1.7 “Contract Value” means the amount the Council pays to the Contractor under the Contract excluding VAT
- 23.1.8 “Contracts Finder” the UK’s electronic procurement portal for contracts with a value of £25,000 or above
- 23.1.9 “Contracts Register” means a comprehensive list of all Contracts and Call-Off Contracts that the Council procures, detailing key attributes such as type, term, value and Contractor and Procurement/ Directorate contact details
- 23.1.10 “Director of Finance” means the Chief Officer designated under section 151 of the Local Government Act 1972 or his/her nominated representative
- 23.1.11 “Director of Legal Services” means the Council’s Principal Solicitor
- 23.1.12 “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
- 23.1.13 “E-procurement System” means Council’s e-tendering portal, The Chest (or equivalent)
- 23.1.14 “Find a Tender” means the UK’s electronic procurement portal for contracts with a value which is above the relevant Procurement Regulations threshold
- 23.1.15 “Financial Management System” means the Council’s electronic purchasing and payments system, Agresso (or equivalent)
- 23.1.16 “Framework Agreement” means an agreement which allows the Council to execute Call-Off contracts for Supplies, Works or Services from a Contractor in accordance with the terms of the overarching agreement, including an agreement for a Dynamic Purchasing System
- 23.1.17 “Grant” means an award of money from the Council to another organisation or an award to the Council from a third party for the purpose of giving a benefit to a third party which is not Supplies, Services or Works. A grant awarded by the Council shall, where appropriate, be made subject to a written Grant agreement specifying the conditions upon which the grant is made and including that the grant can be clawed back if the conditions are not met

- 23.1.18 “Invitation to Tender” means a request for Contractors to submit a Tender to supply Supplies, execute Works or provide Services at specified charges or rates of charges
- 23.1.19 “Modification” means any change to a Contract
- 23.1.20 “Most Economically Advantageous” means using a cost-effectiveness approach or price/quality ratio which offers the best price (this will not necessarily be the lowest price)
- 23.1.21 “Open Procedure” means a procedure for inviting Tenders by advertisement in which an Invitation to Tender is sent to all Contractors who express an interest in Tendering
- 23.1.22 “Officer” includes any employee of the Council
- 23.1.23 “Procurement” means the process leading to the award of a Contract
- 23.1.24 “Procurement Regulations” means the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016 and the Utilities Contracts Regulations 2016 as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (EU Exit Regulations) and as may be consolidated, extended, re-enacted or replaced together with such other UK regulations as may be made from time to time
- 23.1.25 “Purchasing Consortia” means an organised and constituted body of individuals who jointly participate in the Procurement and award of a Contract
- 23.1.26 “Quotation” means a formal offer to supply Supplies, execute Works or provide Services at specified charges or rates of charges
- 23.1.27 “Scheme of Delegation” means the document described as such within the Constitution
- 23.1.28 “Services” 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
- 23.1.29 “Supplies” covers an item(s) of equipment, plant, machinery, vehicle, tool, portable building, 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
- 23.1.30 “Tender” means a formal offer to supply or purchase Supplies, execute Works or provide Services at a stated price or offer to be granted a Concession

23.1.31 “Tenderer” shall mean any potential Contractor submitting a Tender

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.