

Further Proposed Revisions to Contract Procedure Rules

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.

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 Directors and Directors (as relevant)	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
£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.

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.