

Part 4I

Contract Rules

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CONTRACT RULES

SECTION 1: GENERAL COMPLIANCE AND SCOPE

1. COMPLIANCE

1.1 Every contract entered into by the Authority shall be entered into pursuant to or in connection with the Authority's functions and shall comply with:

1.1.1 All relevant statutory provisions;

1.1.2 The relevant European procurement rules when applicable (i.e. the EC Treaty, the general principles of EC law and the EC public procurement directives implemented by the UK Regulations);

1.1.3 The Authority's Constitution including these Contract Rules, the Authority's Financial Rules and Scheme of Delegation;

1.1.4 The Authority's strategic objectives, Procurement Strategy and policies.

1.2. The policy of the Authority, and the objective of these rules, is to ensure that all works, goods and services:

1.2.1 Are obtained with probity and propriety to ensure the proper expenditure of public funds;

1.2.2 Are appropriate for the purpose for which they are obtained;

1.2.3 Ensure Best Value for Money.

2. SCOPE

2.1 These Contract Rules apply to any arrangement made by, or on behalf of, the Authority for the carrying out of works or for the supply of goods, materials or services.

2.2. These Contract Rules do not apply to:

2.2.1 contracts of employment which make an individual a direct employee of the authority;

2.2.2 the acquisition, disposal, or transfer of land (see Procurement Code and Cheltenham BC Disposal Strategy)

- 2.2.3 contracts relating to the placement of deposits or raising of loans under the treasury management strategy;
- 2.2.4 purchases made at public auction.

SECTION 2: COMMON REQUIREMENTS

3. CALCULATION OF CONTRACT VALUES

- 3.1 Unless otherwise stated, where a value or an estimated value is noted in these Contract Rules it means the aggregate value payable in pounds sterling exclusive of VAT over the entire contract period.
- 3.2 The value of an on-going requirement must be aggregated over a minimum period of 48 months using either the aggregate projected value over the coming 48 months OR by using the last 12 months' expenditure and multiplying this by 4.
- 3.3 Contracts must not be artificially under or over estimated or divided into two or more separate contracts where the effect is to avoid the application of the Contract Rules.

4. AUTHORISED OFFICERS AND THEIR RESPONSIBILITIES

- 4.1 Authorised Officers are persons who have delegated authority to deal with the contract in question and who have received corporate training on these Contract Rules and the Procurement Code.
- 4.2 The Authorised Officer must proceed with the purchase in a manner commensurate with its complexity and value, by:
 - 4.2.1 appraising the need for the expenditure and its priority;
 - 4.2.2 defining the objectives of the purchase;
 - 4.2.3 assessing the risks associated with the purchase and how to manage them;
 - 4.2.4 considering what procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing, partnering, packaging strategy and collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium;
 - 4.2.5 consulting users as appropriate about the proposed procurement method, contract standards and performance and user satisfaction monitoring;
 - 4.2.6 for Quotes and Tenders below £10,000, to attach the relevant standard terms and conditions to the purchase order or otherwise draw the attention of the supplier to these standard terms and conditions ; and
 - 4.2.7 for Quotes and Tenders above £10,000, to instruct the Legal Advisor to draft the formal written contract terms and conditions that are to apply to the proposed contract; and
 - 4.2.8 setting out these matters in writing.
 - 4.2.9 ensuring that a purchase order is raised for the contract.

- 4.3 When any employee either of the Authority or of a service provider may be affected by any transfer arrangements, Authorised Officers must ensure that the Transfer of Undertaking Protection of Employment Regulations 2006 (TUPE) issues are considered and obtain legal advice before proceeding with inviting Tenders or Quotations.

5. CONTRACT VALUES

- 5.1 Where the total value for a purchase is within the values in the first column below, the award procedure in the second column must be followed:

Estimated Total Contract Value	Contract Letting Requirements & Forms of Contract
Up to £10,000	The Authorised Officer can purchase from the source that offers the best value for money to the Authority. Contracts shall be by purchase order, with standard terms and conditions. This could be demonstrated by the obtaining of 2 written quotations, where this is possible.
From £10,001 to £50,000	Shall be advertised on the website of the Authority (and/or other public advertisement as determined by the Authorised Officer) At least 3 written Quotations shall be invited and a formal written contract approved by the Legal Advisor must be utilised .
From £50,001 to EU Threshold	Shall be advertised on the website of the Authority (and/or other public advertisement as determined by the Authorised Officer). A minimum of 3 competitive Tenders shall be invited using one of the tendering options in the procurement code. A formal written contract prepared/approved by the Legal Advisor must be utilised.
EU Threshold and Above	Shall be advertised in the Official Journal of the European Journal (OJEU) and on the website of the Authority (and/or other public advertisement as determined by the Authorised Officer). The appropriate EU procurement directive shall be complied with for all goods, services and works A formal written contract prepared/approved by the Legal Advisor must be utilised.

- 5.2 Public advertisements referred to in the above Contract Procedure Rule shall reflect the potential degree of interest from Candidates located within other member states of the EU in order to comply with the EU Treaty principles such as transparency, equal treatment and non discrimination. The Authorised Officer shall seek the advice of the Procurement Advisor or the Legal Advisor before determining the most appropriate public advertisement for the procurement.

6. EXEMPTIONS AND WAIVERS

- 6.1 Subject to the written approvals referred to in Contract Procedure Rule 6.2 below, waivers of any of these Contract Rules shall only be given in the following exceptional circumstances:-
- 6.1.1 Where the goods, materials, works or services are of a unique or specialised nature or are identical or similar to or compatible with an existing provision so as to render only one or two sources of supply appropriate, including:
- an upgrade or
 - where the contract concerns, wholly or mainly, repairs to or the supply of parts for existing proprietary machinery, plant or equipment and the repairs to or the supply of parts cannot be carried out practicably by alternative contractors;
- or
- 6.1.2 The goods or materials to be purchased are proprietary articles or are sold only at fixed prices; or
- 6.1.3 The price of services, goods or materials to be purchased is controlled by trade organisations, or if for other reasons there would be no genuine competition; or
- 6.1.4 Where in the opinion of the Authorised Officer in consultation with the s151 Officer and the Legal Advisor considers that the services to be provided or the work to be executed or the goods or materials to be purchased are urgent (subject to the action being reported to the next Cabinet meeting); or
- 6.1.5 Specialist consultants, solicitor, barrister, agents, artist or professional advisors are required and:
- There is no satisfactory alternative; or
 - Evidence indicates that there is likely to be no genuine competition; or
 - It is, in the opinion of the Authorised Officer, in the Authority's best interest to engage a particular consultant, solicitor, barrister, agent, artist or advisor;
- or
- 6.1.6 The goods or materials to be purchased are within a bulk purchasing agreement made between the Authority and a consortium or other organisation approved by the Authority; or
- 6.1.7 The works to be executed or the goods or materials to be purchased can only be carried out or supplied by a statutory body.
- 6.2 These Contract Rules may be waived, subject to compliance with any relevant EU/UK legislation. Any such waiver must be agreed by:
- 6.2.1 The Cabinet for contracts above £100,000 or the Chief Executive in consultation with the Leader of the Council if the matter requires an urgent decision and a meeting of the Cabinet cannot be called; or

6.2.3 The Officer(s) authorised under Part 3 table 5 of the Constitution, in consultation with the Section 151 Officer and the Legal Advisor if the contract is £100,000 or less.

6.3 The s151 Officer shall keep a copy of the wavier or a record of the decision and the reasons for it and the wavier itself shall be kept with the contract.

7. RECORDS OF TENDERS AND CONTRACTS

7.1 The Director Commissioning shall maintain a list of all Tenders received.

7.2 A Contracts Register of all contracts awarded above £10,000 shall be maintained by the Procurement Advisor

7.3 Each Authorised Officer shall maintain their own register of all other contracts under £10,000 entered into by his/her department.

SECTION 3: TENDERING PROCESS

8. PRE-QUALIFICATION

8.1 Authorised Officers are responsible for ensuring that all Candidates for a contract are suitably assessed. The assessment process shall establish that the potential Candidates have sound:

- economic and financial standing; and
- technical ability and capacity

to fulfil the requirements of the Authority.

8.2 Financial checks must be undertaken for all contracts where the value of the contract is above £10,000(see Procurement Code)

8.3 Any procurement subject to the EU Regulations shall comply with the appropriate EU Regulations.

9. ELECTRONIC TENDERING

9.1 The Authorised Officer following consultation with the Legal Advisor may authorise:

- 9.1.1 the transmission of Quotes and Tenders by electronic means;
- 9.1.2 the carrying out of an electronic auction where satisfied that it is in the interests of the Authority to do so;
- 9.1.3 the carrying out of the whole tendering process and the award of the contract by electronic means where satisfied that it is in the interests of the Authority to do so.

10. INVITATION TO TENDER

10.1 The Invitation To Tender shall state that no Tender will be considered unless it is received by the date and time stipulated in the Invitation To Tender. Subject to Contract Procedure Rule 11.3 below, no Tender delivered in contravention of this Contract Procedure Rule shall be considered.

10.2 All Invitations To Tender shall include the following:

- A description of the goods or services to be supplied or works to be undertaken.
- The procurement timetable including the Tender return date and time, which shall allow a reasonable period for the applicants to prepare their Tenders.
- A specification and instructions on whether any variants are permissible.
- the Authority's terms and conditions of contract;
- The evaluation criteria including any weighting as considered appropriate.
- Pricing mechanism and instructions for completion.
- Whether the Authority is of the view that TUPE may apply.
- Form and content of method statements to be provided.
- Declaration of Non-Collusion;
- Notification that all Tenders are submitted at the tenderer's own expense;
- A requirement for tenderers to disclose details of all convictions under Regulation 23(1) of the Public Contracts Regulations 2006 or a declaration that there are no such convictions;
- Rules for submitting of Tenders and whether Tenders may be submitted electronically.

11. **SUBMISSION AND OPENING OF TENDERS**

11.1 Tenders shall be submitted in accordance with requirements set out in the Invitation to Tender. All Tenders received shall be addressed to the Authorised Officer in a plain sealed envelope endorsed with the word "Tender – Do Not Open" followed by the subject matter to which it relates (but no other name or mark indicating the sender). Tenders shall be kept in a safe place by the Director Commissioning and remain unopened until the time and date specified for their opening.

11.2 Quotations and Tenders above £10,000 shall be opened by at least one officer nominated by the Authorised Officer and one other officer nominated by the Director Commissioning. An immediate record shall be made of the Tenders received including names, amount of tender and the date and time of opening.

11.3 No Tenders received after the specified date and time for receipt of Tenders shall be accepted or considered by the Authority unless the Authorised Officer, after consulting the s151 Officer and the Legal Advisor, is satisfied that there is sufficient evidence for the Tender having been despatched in sufficient time for it to have arrived before the closing date and time

12. **ARITHMETICAL ERRORS AND POST TENDER CLARIFICATION**

12.1 Contractors can only alter their Tenders or Quotations after the date specified for their receipt

but before the formal acceptance of the Tender or Quotation, where examination by officers of the Tender or Quotation reveals arithmetical errors or discrepancies which affect the Tender or Quotation figure. The contractor shall be given details in writing of such errors or discrepancies and afforded an opportunity of confirming, amending or withdrawing their offer in writing.

12.2 All post-tender clarifications shall:

12.2.1 only be undertaken following consultation with the Procurement Advisor and the Legal Advisor ;and

12.2.2 not disclose commercially sensitive information supplied by other bidders for the contract.

13. **AWARDING CONTRACTS**

13.1 The Authority shall only award a contract where this is the Best Value for Money for the Authority,

13.2 Where the Best Value for Money does not represent the lowest price (where payment is to be made by the Authority) or the highest price (if payment is to be received) the relevant considerations for awarding the contract must be specified such as in accordance with previously approved most economically advantageous tender.

14. **DEBRIEFING**

14.1 The Authorised Officer shall provide a debriefing to unsuccessful Tenderers on written request or as required by the law.

SECTION 4: CONTRACT FORMALITIES

15. **CONTRACT TERMS AND CONDITIONS**

15.1 Contracts shall be entered into on the Authority's terms and conditions, as prepared by the Legal Advisor, which shall be included in the Invitation to Tender documentation.

16. **BONDS AND PARENT COMPANY GUARANTEES**

16.1 Bonds or Parent Company Guarantee will be required on all works contracts above £1,000,000 or for a contract of a lesser value if considered appropriate by the Authorised Officer or Section 151 Officer following consultation with the Legal Advisor

16.2 Bonds or Parent Company Guarantee may be required for any contract if considered appropriate by the Authorised Officer or Section 151 Officer following consultation with the Legal Advisor

17. **EMBEDDED LEASES & EMBEDDED DERIVATIVES**

17.1 Prior to completion of a contract the Authorised Officer must complete the following questionnaires:

- Identification of Embedded Leases questionnaire at appendix 1;
- Identification of Embedded Derivatives questionnaire at appendix 2

17.2 The Authorised Officer must complete the questionnaires referred to in the Contract Procedure Rule 17.1 referred to above in accordance with the instructions set out in the questionnaires.

17.3 Upon completion of the questionnaire(s), if the Authorised Officer concludes that the contract contains an embedded lease or an embedded derivative then a copy of the contract must be referred to the s151 Officer for a full financial assessment.

17.4 All completed questionnaires must be filed with the Tender documents and retained for audit purposes.

18. EXECUTION OF CONTRACTS

18.1 All contracts above £10,000 shall be executed as a deed and the common seal shall be affixed unless the Borough Solicitor or Head of Legal Services considers it more expedient to sign the contract. All contracts not exceeding £10,000 shall be signed by any of the Borough Solicitor, Head of Legal Services, Chief Executive, Executive Directors or Directors, unless the Borough Solicitor or Head of Legal Services requires that the contract be sealed.

SECTION 5: SPECIFIC TYPES OF TENDERING

19. APPROVED LISTS (CALL OFF CONTRACTS)

19.1 The Authority may maintain lists of Suppliers that meet its pre-qualification requirements. Quotations and Tenders for contracts that are not subject to the EU Regulations may be invited from Suppliers included on approved list or call off contract. Where the Authority intends to use an approved list or a call off contract for services, supplies or works contracts, the selection of which contractors should be included on such list should itself be advertised. The advertisement shall be placed on the Authority website and / or other public advertisement as determined by the Authorised Officer in consultation with Procurement Advisor or Legal Advisor.

19.2 The approved list or call- off contract shall be amended or reviewed as required and shall be reviewed at intervals not exceeding three years or in accordance with the relevant call off contract. At least four weeks before each review each person or body whose name appears in the Approved List shall be asked whether they wish their name to remain and advertisements inviting applicants shall be published as set out in the Contract Procedure Rule 19.1 above.

20. NOMINATED AND NAMED SUB-CONTRACTORS

20.1 Tenders for sub-contracts to be performed or goods and materials to be supplied by nominated suppliers shall be dealt with in accordance with the provisions of these Contract Procedure Rules

21. FRAMEWORK AGREEMENTS

21.1 Framework Agreements are used where the Authority wishes to contract for the supply of supplies, services or works without conducting a new procurement exercise. However, the Framework Agreement may include within its terms a requirement for a mini competitive exercise between all those Suppliers who are parties to the Framework Agreements and can

provide the goods/services being tendered. Any Framework Agreement shall be tendered in accordance with these Contract Rules. Where the Authority has entered into a Framework Agreement through procurement or is able to call off from existing Framework Agreements then the Authority may benefit from using those contracts without entering into a separate procurement subject to the approval of the Procurement Advisor.

22. COLLABORATIONS AND JOINT PROCUREMENT

22.1 The Authorised Officer may participate in any collaborative or joint procurement arrangements with other Local Authorities or public bodies including membership or use of a Purchasing Consortia subject to the prior approval of the Director Commissioning.

23. PROCUREMENT BY CONSULTANTS

23.1 Any consultants used by the Authority shall be appointed in accordance with these Contract Rules. Where the Authority uses consultants to act on its behalf in relation to any procurement, then the Authorised Officer shall ensure that the consultant carries out any procurement in accordance with these Contract Rules. No Consultant shall make any decision on whether to award a contract or who a contract should be awarded to. The Authorised Officer shall ensure that the consultant's performance is monitored.

DEFINITIONS

Authorised Officer	An officer who has delegated authority to deal with the contract in question and who has received corporate training on these Contract Rules.
Best Value for Money	The optimum combination of whole life costs and benefits to meet the Authority's requirement.
Bond	An insurance policy: if the contractor does not do what it has promised under a contract with the Authority, the Authority can claim from the insurer the sum, of money specified in the bond (often 10% of the contract value). A bond is intended to protect the Authority against a level of cost arising from the contractor's failure.
Candidate	Any person who asks or is invited to submit a Quotation or Tender.
Consultant	Someone appointed (but not under a contract of employment) for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role.
Contractor	any person, company or supplier who has: <ul style="list-style-type: none"> (a) been approached to provide a Quotation or Tender (b) provided a Quotation or Tender, or been awarded a contract in accordance with these contract rules.
EU Regulations	The UK regulations implementing the EC public procurement directives.
Framework Agreement	An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to

	price and, where appropriate, the quantity envisaged.
Invitation to Tender	Invitation to tender documents in the form required by these Contract Rules.
Parent Company Guarantee	A contract which binds the parent of a subsidiary company as follows: if the subsidiary company fails to do what it has promised under a contract with the Authority, the Authority can require the company to do so instead.
Quotation	A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).
Supplier	A person or body of persons providing, or seeking to provide, supplies, services or works to the Authority.
Tender	A Candidate's proposal submitted in response to an Invitation to Tender.

Appendix 1

Identification of Embedded Leases

Introduction: This questionnaire is intended to address whether embedded leases exist in contracts for the purchase of goods or services and other contracts.

The questions are aimed at determining if the contracts give the Local Authority the right to use an asset in exchange for payment

This questionnaire must be completed for all contracts with a value greater than £50,000 and a term of more than 1 year.

Contract Information:

Contract Details	Comments
Supplier	
Effective date	
Expiration date	
Reference	
Description of contract	
Contract reviewed by	

Questions:

No.	Question	Yes or No
1	<p>Does the contract involve the Local Authority using a specific asset or group of assets?</p> <p>Examples of this would be, the use of a car, a photocopier, a piece of medical equipment, a building, a waste truck.</p>	
2	<p>Does the Local Authority control the use of the asset?</p> <p>If the asset is situated in a Local Authority building, and can only be used by the Local Authority staff, or by others as directed by the Local Authority, then clearly the Local Authority controls the asset. Similarly if the Local Authority controls how an asset such as a waste truck is used, or controls the majority of the output from an asset then it has control.</p>	
3	<p>Does the Local Authority pay for the use of the asset?</p> <p>Payment, could be in the form of cash, but maybe in other forms, such as agreeing to purchase a consumable from a supplier, providing services free of charge, or any other way of passing economic benefits to the supplier.</p>	

If the answer to any of the above questions is YES, the contract must be referred to the Section 151 Officer, so that a full financial assessment can be conducted.

This questionnaire must be filed with the contract/tender documents, and will be subject to periodic audit by both external and internal auditors.

Appendix 2

Identification of Embedded Derivatives

Introduction: This questionnaire is intended to address whether embedded derivatives exist in contracts for the purchase of goods or services, but also includes lease and other contracts. The questions relate to features that may be found in various purchase contracts.

The questions relate to how the price paid by the Local Authority may vary throughout the life of the contract.

This questionnaire must be completed for all contracts with a value greater than £50,000, or all contracts greater than 3 years in length

Contract Information:

Contract Details	Comments
Supplier	
Effective date	
Expiration date	
Reference	
Description of contract	
Contract reviewed by	

Questions:

No.	Question	Yes or No
1	<p>Does the contract contain a clause that ‘CAPS’ the price the Local Authority has to pay for goods or services?</p> <p>A ‘CAP’ is any mechanism in the contract which stops the price raising above a certain level.</p>	
2	<p>Does the contract contain a clause that sets a ‘FLOOR’ to the price that the Local Authority has to pay for goods or services?</p> <p>A ‘FLOOR’ is any mechanism in the contract which stops the price falling below a certain level.</p>	
3	<p>Does the contract contain a provision whereby the Local Authority can obtain title to the goods or services in the future at a fixed price?</p> <p>An example would be the purchase of software services, where the software could be purchased at a later date for a fixed price.</p>	
4	<p>Do the prices the Local Authority have to pay, increase by more than 2 times RPI?</p> <p>A lot of contracts have ‘RPI’ (retail price index) annual increases</p>	
5	<p>Do the prices the Local Authority have to pay, increase by some other form of Indices or commodity price?</p> <p>Examples would be, price of electricity, exchange rate, earnings, price of oil, rate of interest, etc</p>	

If the answer to any of the above questions is YES, the contract must be referred to the s151 Officer so that a full financial assessment can be conducted.

This questionnaire must be filed with the contract/tender documents, and will be subject to periodic audit by both external and internal auditors