

# **PART 4**

## **(H) CONTRACT PROCEDURE RULES**

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## 1. Purpose

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- 1.1 These rules are the Council's procedure rules for buying things for the Council ('the Rules'). They do not apply to internal purchases or service provision, including Service Level Agreements. They must be used where you need to buy something from outside the Council. If purchasing on behalf of the Council's strategic partners, for example IMPACT, Link4Life, RDA or RBH, please ensure you are following the correct procedure. If in doubt, please contact Corporate Procurement. **Corporate Procurement must be your first point of contact before activity is initiated.**
- 1.2 They are the rules by which we spend money on the supplies, services and works we need in order to deliver our services. The Rules are part of the Council's Constitution, and have been produced as part of our approach to the way we buy things.
- 1.3 Please refer to the Definitions in Appendix 1 at the end of the Rules for any explanations of terms.
- 1.4 These Rules apply to any contracts that result in a payment being made by, or to, the Council, including the disposal of surplus goods. They also apply to some types of contracts where a service is being provided by the Council, which results in some income being generated for the Council.
- 1.5 The Rules do not cover grants, which the Council may receive or make (unless the grant is part of a contract for services). Where the Council is the accountable body in respect of a funding stream, the agencies own procedure rules and procurement requirements will need to be taken into account as they may be more stringent than the Council's.
- 1.6 Government and EU public procurement policy requires that the Council must permit, and be seen to be permitting, freedom of opportunity to trade with the Council, and to be open and transparent about how we do things. Whenever we are buying things for the Council we must always act to promote competition.
- 1.7 If we fail in this duty, a supplier or contractor may have cause for a complaint against us and, in the worse case, may be able to claim damages.
- 1.8 Our Rules have three main purposes:
  - ❖ To comply with the obligations that govern the spending of public money such as the EU procurement regime;
  - ❖ To obtain Value for Money in the way we spend money, so that we may in turn offer better and more cost effective services to the public; and
  - ❖ To protect people who follow the Rules.
- 1.9 These Rules are written in plain English and reflect the fact that the great majority of our spending is carried out by front-line services, so the Rules help decisions to be made by the right people at the right level in the Council.
- 1.10 This document contains rules and refers to guidance. The Rules should be read alongside the Council's e procurement guidance on the Intranet. If you are in any doubt about whether the Rules apply, you must always check with Internal Audit, Corporate Procurement or Legal and Democratic Services.

Link to [Internet](#)

## 2. Scope

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- 2.1 Corporate Procurement and the Head of Legal and Democratic Services are responsible for keeping the Rules under review. Corporate Procurement is also responsible for monitoring compliance.
- 2.2 The European Union sets down (through a Treaty) our obligations at the Council, when we make purchases. The key principle is to ensure that everyone in the market place, who could provide the goods, supplies, works or services to the Council, is able to do so if they wish.
- 2.3 Our Rules also need to be flexible for the future. We all now need to consider, for example, e-auctions, e-tendering or setting up framework agreements. Increasingly, Councils are collaborating through joint procurements for example with another Service or Council and sometimes other public bodies such as AGMA (Association of Greater Manchester Authorities) or the OGC (Office of Government Commerce).
- 2.4 If you are buying larger or costly things, the Rules for higher value orders and contracts are stricter than for those of lower value. This is to ensure that the benefits of a more thorough, complex process are not outweighed by cost relative to the value of the supplies, services or works in question. In all instances, you must contact Corporate Procurement before commencing on any such activity.
- 2.5 At the highest end of the value scale, we must follow the Public Procurement Regulations 2006, which enact in England the EU Public Procurement Directives, which require us to observe certain additional procedures. You must also consult with the Corporate Procurement Manager before you start buying what you need.

## 3. Steps Prior to Purchase

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- 3.1 Achieving Value for Money is one of the Council's stated objectives in the Corporate Strategy — Aiming High. This means that we must always consider how each procurement process or purchase is consistent with the Council's duty to ensure continuous improvement in what we do, with respect to economy, efficiency and effectiveness. We need to question whether we should be buying anything at all and, if it is considered necessary, whether we can do it best ourselves, jointly, or through relying on someone else to get the best value for money (See Appendix 4 Spend Considerations). We should also consider the whole life cost of any procurement/commissioning with regards to aspects such as sustainability, climate and carbon effects, local economy and equality and diversity.

Further help and advice regarding whole life costing should be sought from the Finance and Procurement Service.

Corporate Procurement must be your first point of contact before activity is initiated.

### **The Competitive Process**

- 3.2 European Law and Government policy state that we must always make sure that we are offering the whole market the opportunity to provide supplies of works or services to the Council in order to ensure competition. The Council will meet this requirement by advertising most spend opportunities via the online procurement portal 'The Chest'.

- 3.3 To achieve Value for Money, you must consider options for the delivery of supplies, works or services. The options are:
- a. Not buying the supplies, not having the works done, or not providing the services at all;
  - b. Providing the goods, works or services ourselves (for example, by taking surplus supplies from another service or using their staff);
  - c. Getting someone else to provide the ongoing supplies, works or service ('outsourcing'/provision by the private, voluntary or 'third' sectors, or another local authority or public body);
  - d. Providing the supplies, works or services in partnership with someone else (with the private, voluntary or 'third' sectors, or another local authority or public body);
  - e. By commissioning jointly with other Councils; and/or shared service delivery with another Council;
  - f. Accessing an existing contract or framework agreement, or
  - g. Purchasing after the relevant market testing process has been completed.

#### **Who Can Buy Things?**

- 3.4 Service Directors should ensure that procurement is undertaken by procurement professionals in conjunction with the Corporate Procurement Team. All purchases with a total cost of over £50,000 across the lifetime of the contract must have gained the correct approval to ensure the correct procedures are followed, see Section 5 for further details.
- 3.5 Before starting the procurement process, we need to ensure that we have carefully identified the need and fully assessed the options for satisfying it. Before you start, you must:
- a. Consider what is important to the Council in this procurement?
  - b. Ask yourself if you just need the supplies, works or services?
  - c. Consider if there are other things you want to bring about (for example, improved environmental performance or job creation). For advice, please consult Corporate Procurement by emailing [Corporate.procurement@rochdale.gov.uk](mailto:Corporate.procurement@rochdale.gov.uk)
  - d. Gain approval to tender in line with the value thresholds below:

**NB** Approval to tender must be given before the formal tendering process is entered into. The financial limits for approval to tender (below) are different to those that apply when conducting the purchase in Section 5.

Expected value up to £250,000	Service Director
Value between £250,001 - £500,000	Cabinet Member
Value in excess of £500,000	Cabinet

- 3.6 For major, specialist, higher value or important contracts — for example, those which involve the transfer of Council employees or a PFI (Private Finance Initiative) — Service Directors must:
- a. Seek a decision from the Cabinet Member or Cabinet in line with the value thresholds above.
  - b. Engage the support of Corporate Procurement and Legal and Democratic Services at project initiation stage.

The European Directives and UK Regulations are very long, and only the principal requirements can be given here. If in doubt, refer to Corporate Procurement or the e procurement guidance available on the Intranet.

Link to [Internet](#)

## 4. Deciding which Procurement Method

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- 4.1 Corporate Procurement is here to advise you on the most suitable procurement method applicable, and will support you through the process.
- 4.2 You do not need to contact Corporate Procurement for pre-agreed contracts. To select your contractor you can use:
- a. **Centrally Approved Contracts.** Where these exist they **must** be used and you will have complied with Contract Procedure Rules. The majority of centrally approved contracts are available via e Procurement.
  - b. **Strategic Partners.** Where a strategic partnership is in place, this contractor must be given first right of refusal for any work specified under the contract.
  - c. **Framework Agreements.** Is an agreement with provider/s that sets out the terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement. In most cases a framework agreement is subject to Public Procurement Regulations. The framework agreement will define the price, quality, and timescales and will allow the Council to place orders without further tendering for the period of the agreement. They offer benefits of bulk-buying, potential for improved service and reduced tender costs. Framework agreements should be used where they provide the most economically advantageous terms.
  - d. **Joint Agreements.** Wherever possible, the Council's joint agreements should be used, or a regional or national one. Examples of joint agreements include AGMA (formerly LAPP), NW Improvement and Efficiency Partnership, (formerly NWCE, North West Centre of Excellence), CATALIST and OGC.
  - e. **Request for Quote.** The Council's Procurement systems allow users to request quotes from suppliers where standard items are not available, or for bespoke requests. For advice, please contact Corporate Procurement.

Further details can be obtained from the Corporate Procurement Unit on pre-approved contracts via eProcurement on the [Internet](#)

4.3 If a pre-approved contract is not in place, you need to conduct a **competitive process** via Corporate Procurement, i.e. if the above options are not appropriate or cost-effective. The main types are:

- ❖ **Open Tender.** All interested contractors submit a tender in response to an advertisement;
- ❖ **Restricted Procedure.** Interest is expressed from interested contractors in response to an advertisement, with a selection of those contractors being invited to submit a tender;
- ❖ **Negotiated Procedure.** Expressions of interest are received from interested contractors in response to an advertisement, with a selection of those contractors being invited to negotiate;
- ❖ **Competitive Dialogue.** Expressions of interest are received from interested contractors in response to an advertisement, with a selection of those contractors being invited to enter into a process or dialogue;

The rules set out in these Contract Procedure Rules must be followed, and Corporate Procurement will advise you on the most suitable approach.

#### **Electronic Procurement Systems**

4.4 Electronic procurement systems should always be used in preference to paper transactions. The Council currently operates:

a. **eProcurement**

All orders should be raised via the Council's eProcurement system. Suppliers should not accept an order without an electronic purchase order reference. Standard catalogues should be used where available. Requests for quotes for goods and services can also be submitted via the eProcurement system or via The Chest. Please refer to Corporate Procurement for further advice in this area.

b. **The Chest**

All Tenders and Procurement Opportunities at the Council are to be promoted via [The Chest](#), the Council's online procurement portal. Corporate Procurement is able to guide you through this process in accordance with these rules. Should a supplier be unable to access the portal, the supplier must contact Corporate Procurement to be included in any tenders where suitable provision will be made to allow a hard copy (paper) submission.

For guidance on the above systems, please refer to [Corporate Procurement](#) or the relevant Service as specified.

All suppliers wishing to work with Rochdale MBC are encouraged to register on [The Chest](#), including those already on Constructionline. Please note that this is a free service to suppliers, and no other portal should be used without agreement from Corporate Procurement.

### Service Led Procurement

4.4 For the following areas, you need to contact the named Service before commencing any form of procurement unless purchasing from an approved eProcurement system:

a. **Design and Print**

All design and print requests should be directed via Océ DocWorks' Print and Design online submission, managed by the Print and Design Service.

b. **Marketing and Promotional Items**

All requests should be sent via the Communications Team to ensure Corporate Standards are met.

c. **ICT, Buildings Work and Highways Maintenance**

In all instances please refer to the Impact Partnership via the [Helpdesk](#).

Link to [IT Regulations](#)

## 5 Conducting a Purchase

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### Deciding which Procedure Applies

5.1 The table below sets out which procedures must be followed for different contract values. We must never deliberately split the value of contracts. This table is provided as guidance only and contact must be made with Corporate Procurement before commencing any procurement activity.

The Total Value of the contract is calculated as follows:

Yearly contract value x contract period in years (including any extension periods).

For example, a three-year contract with an annual value of £60,000 would have a total value of £180,000, and would therefore be subject to the OJEU process.

Value of Contract	Minimum Procedure	What to do
Below £5,000	Order via eProcurement standard orders or two quotes obtained via Corporate Procurement and advertised via 'The Chest' 'Request for Quote' (RFQ) functionality.	Refer to eProcurement or contact Corporate Procurement
£5,000 - £49,999	Order via eProcurement standard orders or three quotes obtained via Corporate Procurement and advertised via 'The Chest'.	Refer to eProcurement or contact Corporate Procurement
£50,000 to £156,442	Formal tender process. As a minimum, you must advertise on the Council's website and 'The Chest'. You should also consider advertising more widely (e.g. external trade or professional journals). You should assess the cost and benefits of using such advertising media. Seek advice from Corporate Procurement Unit.	Contact Corporate Procurement in all instances.

Value of Contract	Minimum Procedure	What to do
More than £156,442	All procurements for supplies and for most works the Public Procurement regulations 2006 apply, which require you to advertise in the EU Journal and invite to tender. You must also advertise on the Council's website and 'The Chest'.	

These thresholds are amended annually and you must refer to the Corporate Procurement Manager to check the latest thresholds. Contract values above which procedures governed by the Public Procurement Regulations apply are currently:

For supplies and service (including goods and consultancy services):	£156,442
For works:	£3,927,260

The latest value is available via the Intranet on the Corporate Procurement section.

Please refer to the Glossary for definitions of Goods, Services and Works.

- 5.2 A Purchase Order must be raised in the eProcurement system for all orders. Your purchase order must contain the standard terms and conditions of contract between the Council and the supplier. A quotation and a purchase order will create a legally binding contract. The purchase order is used to formalise the terms of the contract.

See the flowchart at Appendix 3 for assistance or further guidance on the types of procurement route contained within the Procurement Guide.

Link to [Internet](#)

Please note: All IT/ICT requirements are subject to IMPACT procedure rules, and the IT Service Desk is the first point of contact.

### 5.3 Competition Requirement

- a. All contracts must meet the requirements of Contract Procedure Rules;
- b. All contracts with a total contract value of £5,000 or above must be competitively let unless an exemption from Contract Procedure Rules (see Section 18) has been obtained.
- c. You must not enter into separate contracts or select methods of calculating Total Value in order to minimise the application of Contract Procedure Rules and Public Procurement Regulations 2006. Procurement Guidance on the Regulations can be accessed through the Corporate Procurement Intranet pages and is available from Legal and Democratic Services.

## 6 Drafting your Contract Specification

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- 6.1 You must produce a description of the goods, services or works you need before the tender process (the specification) is initiated. This will allow you to compare prices

properly, and once the contract has been let, will enable you to manage the contractor's performance. Your specification should also include details of your planned contract evaluation and monitoring.

- 6.2 The level of detail of your specification will depend on the value and type of goods, services or works you are purchasing.
- 6.3 Corporate Procurement has a range of templates and you should contact them in the first instance to assist you through this stage of the process.
- 6.4 The agreed specifications will become the basis on which the tender is evaluated. Please see Section 7.

## 7. Evaluation Method

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- 7.1 Before you ask for prices (whether by quotation (RFQ) or invitation to tender (ITT) you must decide and record how you will assess the quotations or tenders that you receive. Your criteria must be designed to ensure that the Council receives best value for money. Corporate Procurement will advise you in this area.
- 7.2 You must publish any tender scoring system or similar tender evaluation model to be used prior to the issue of the invitation to tender on [The Chest](#). At the same time, you must also notify suppliers of any weighting to be used via 'The Chest'. These rules apply to all contracts, regardless of whether or not they are subject to the Public Procurement Regulations. Again, Corporate Procurement will provide guidance in this area.
- 7.3 In deciding on your evaluation criteria, you may need to consider how the views of service users and/or other stakeholders can be taken into consideration during the procurement process. You must follow any guidance contained in the Procurement Guides in relation to service user/stakeholder engagement, which are available on the [Internet](#).
- 7.4 Service Directors must ensure that the contract award criteria:
  - a. Does not prevent fair competition;
  - b. Does not illegally discriminate between tenderers;
  - c. Meets any relevant UK and EU laws.
- 7.5 The **basic** award criteria can be:
  - a. Most economically advantageous tender (MEAT), where considerations other than price apply. This will be, in most cases, the most suitable criteria as it provides the Council with the greatest flexibility; or
  - b. Lowest price where the Council is the buyer;
  - c. Highest price where the Council is the seller.

Please consult Corporate Procurement who will advise you on the relevant award criteria for your tender or quote.

- 7.6 Where your award criteria is based on the most economically advantageous offer, you may take into account relevant considerations, such as price, technical standard, experience and skill, past performance, practical considerations, financial proposals, contract management, quality management proposals and delivery proposals.
- 7.7 All evaluations will be processed via [The Chest](#), unless a supplier has contacted Corporate Procurement stating that it is unable to use the Internet. In such cases, Corporate Procurement will make alternative arrangements.

## 8. Shortlisting Tenderers to Invite to Tender

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- 8.1 Contracts which are subject to the Public Procurement Regulations (and other contracts where this is appropriate) generally follow a two-stage process via The Chest but this will vary depending on a number of factors of which Corporate Procurement will provide advice. The two-stage process will generally include:
- a. **Stage 1; Selection.** This stage uses a Pre-Qualification Questionnaire ('PQQ') as a tool of short-listing those suppliers who you want to invite to submit a tender; and
  - b. **Stage 2; Evaluation.** This will usually lead to the award of the contract. It is at this stage that any contract specific proposals (e.g. price and how the contract will be delivered) are assessed. Evaluation is dealt with in more detail at Section 13.
- 8.2 The PPR rules state that, at Stage 1 (selection), you may only consider those matters which are relevant to the performance of the contract (e.g. financial standing, expertise, experience and technical capacity). You **CANNOT** consider the suppliers' proposals as to *how* the contract would be delivered.
- 8.3 Where you are advertising for suppliers, **you must agree and record your method for selecting short-listed tenderers before you advertise**. When deciding your method, you must:
- a. Treat all tenderers in the same way;
  - b. Keep the process simple and clear; and
  - c. Record and retain all documents relating to your selection decisions.
- 8.4 You must give tenderers a reasonable amount of time to complete the PQQ. Suggested timings are available in [The Chest](#).
- 8.5 The receipt and opening of PQQs will automatically be documented in The Chest and verified by a representative of the Legal and Democratic Service.
- In the case of a PQQ not being submitted electronically **after prior approval from Corporate Procurement**, the receipt and opening should be formally recorded, dated and signed by two officers of the Service concerned. All non-electronic PQQ will be returned to the Town Hall at the same time and date as specified on The Chest.
- 8.6 PQQs submitted after the deadline should not be accepted.
- 8.7 Once a supplier has been approved to progress through to the selection stage, they are considered suitable to undertake the contract, and you cannot then fail them on the same

criteria as that which the evaluation stage (Stage 2) covers, unless relevant changes occur during the later stages of the procurement process (e.g. a change in a supplier's financial standing).

- 8.8 A minimum number of short-listed suppliers are then invited to submit tenders, see section 9.

## 9 Inviting Tenders

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- 9.1 All Tenders must be advertised via The Chest. You must invite at least three suppliers to tender (or five tenders using Public Procurement Rules). Where the purchase is being funded by an external body, for example, ERDF (European Regional Development Fund), please ensure you meet their procurement procedure rules.
- 9.2 You must send an invitation to tender together with the contract documents and a tender form via The Chest. Your invitation to tender must use the templates available from Corporate Procurement. You must also include instructions on how and when they must return their tenders. A standard invitation to tender is available through [The Chest](#), via Corporate Procurement.
- 9.3 You must give tenderers a reasonable amount of time in order to properly complete the tender, and you must factor a reasonable response time into your procurement timetable. What is considered to be 'reasonable' will depend upon a number of factors, e.g. the amount/complexity of the information that you require.
- 9.4 All tenders from suppliers will be submitted electronically via The Chest unless the tenderer is unable to do so. In this instance, prior approval must be gained from Corporate Procurement. If this is the case, their tender should be submitted to the Town Hall at the same time and date stipulated in The Chest. The supplier must, in this instance, provide at least one hard copy and one electronic copy on disc. In the case of any dispute the electronic copy will take precedence. Guidance is also available from Corporate Procurement and available via The Chest for suppliers in respect of preferred formats for electronic documents. If you are unable to open any documents submitted via The Chest, conversion software is available from the IMPACT Service Desk.
- 9.5 During the period allowed for preparing tenders, you must record all your communications with tenderers via 'The Chest' through the use of the Question and Answer facility. If a tenderer raises a query during this period, you must pass it on to all tenderers together with your reply. Remember to never disclose the identity of the tenderer who has raised the query or any commercially sensitive information. If you are contacted by a means other than The Chest (e.g. by phone or email) a note must be made on The Chest and sent to the supplier to enable a full audit trail.
- 9.6 You must not pass on the names, details or any other personal information of suppliers to anyone at any time during the tendering process.

## 10. Returning Tenders

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- 10.1 All tenders should be sent electronically via [The Chest](#). If a tender is being submitted in hard copy or requires hard copy elements, the procedure detailed in Appendix 5 should be followed. This should only be the case after agreement with Corporate Procurement.
- 10.2 Tenders should not be opened via The Chest until the appointed time.

- 10.3 At the specified time, the designated officer from the contracting Service should open all tenders received. The Head of Legal and Democratic Services will nominate a 'Verifier' who will ensure no tenders are opened after the promoted deadline. All actions are documented in a register and a full audit trail is available.
- 10.4 Hard copy tenders will only be accepted in exceptional circumstances.
- 10.5 Late tenders can not be accepted, see Appendix 5 for information on how these should be dealt with.

## 11. Opening Tenders

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- 11.1 Before the deadline for return of tenders, you must agree a time for opening the tenders. Every effort should be made to have the tenders opened as soon as possible after the deadline for return has passed. If a delay becomes necessary, the Borough Solicitor or representative must agree to this with the reason recorded. The deadline for returning tenders should never be extended to accommodate late tenders.
- 11.2 It is the responsibility of the designated officer for the contracting Service to ensure that the procedures for the opening of tenders are followed, and that the correct records and documents are completed.
- 11.3 The opening requirements as set out in the table below must be followed:

Type of contract	Opening requirements via The Chest	Opening requirements for Hard Copies (see Appendix 5)
Ordinary	Tenders verified by Corporate Procurement	Tenders opened in front of at least two officers from contracting Service.
Major works or EU which has a total contract value above the EU threshold for goods and services including any call-off contract under a framework agreement	Tenders verified by an officer from Legal And Democratic Services in front of at least one officer from the contracting Service. In some circumstances the Borough Solicitor can delegate to the Corporate Procurement Manager or their Deputy for verification.	Tenders opened in front of at least one officer from the contracting Service and one officer from Legal And Democratic Services.

## 12 Late Tenders and PQQs (Pre-Qualification Questionnaire)

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- 12.1 The published date and time deadline of tender or PQQ submission is the absolute cut-off for the acceptance of bids. No submissions will be accepted for evaluation after this time.
- 12.2 Late tenders or PQQs submitted via The Chest will be automatically locked with the ability to open disabled until after the contract award date has passed.
- 12.3 If you receive fewer tenders than expected, do not contact tenderers to ask whether they have sent one in.

## 13. Assessing Tenders

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- 13.1 Before assessing the tenders, you must check that each one meets the requirements of your specification (often referred to as the Compliance Check). You must also ensure that there are no major mistakes and that nothing is missing.
- 13.2 The accuracy of the figures in each tender must also be checked. If you find minor mistakes which do not affect the overall price or the specification, contact the tenderer via The Chest, and ask them to confirm the correct figures using 'Post Tender Clarification' functionality on The Chest. Keep a record of all mistakes and attach it to the tender documents together with any corrections you have agreed with the tenderer.
- 13.3 Whichever evaluation criteria you decide on (see Section 7) this is how you must evaluate for all contracts (including those governed by Public Procurement Regulations). You must not change your criteria at any stage part way through the process.
- 13.4 This evaluation involves scoring tenders objectively by a panel of at least three officers and/or independent experts. In instances where more than three officers sit on the panel, there must be an odd number of representatives to prevent balanced or split decisions. The evaluation criteria must:
- a. Be identical to that specified in the invitation to tender documentation, listed in order of importance;
  - b. Be strictly observed at all times throughout the tender process;
  - c. Reflect the principles of Value for Money;
  - d. Include price;
  - e. Consider whole-life costing, particularly in the case of capital equipment where the full cost of maintenance, decommissioning and disposal should be taken into account;
  - f. Be capable of objective assessment;
  - g. Be weighted according to their respective importance;
  - h. Include, where applicable, the quality of the tenderers' proposals to accept a transfer of staff under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE); and

Corporate Procurement will advise you on evaluation criteria before commencing the process. The criteria can be weighted to reflect the needs of the contract.

- 13.5 Your assessment documentation should clearly show:
- a. The result of your assessment of each tender;
  - b. A comparison of assessment results; and
  - c. Your recommendation for who should be awarded the contract.
- 13.6 The results of your assessment are strictly confidential, and as such, you must not pass them on to anyone who is not involved in the evaluation process.
- 13.7 The results of your assessment referred to in paragraph 13.5 above should be sent to the person with sufficient delegated authority to award the contract as set out in the Council's [Scheme of Delegation](#).

- 13.8 A contract may be awarded with the written authority of the appropriate Service Director where expenditure does not exceed £250,000 (under delegated powers). The Service Directors should also notify the award to the Head of Finance Services and the Corporate Procurement Manager in writing, and report annually to Cabinet. This is the total cumulative value of the contract, and not just the annual value. The Contract should also be stored on The Chest and relevant contract monitoring be put in place.
- 13.9 Tender prices between £250,000 and £500,000 require approval from the relevant Cabinet Member in accordance with the Scheme of Delegation to Members before being awarded.
- 13.10 Tenders over £500,000 must go to Cabinet for award and approval.
- 13.11 If the amount of the tender proposed to be accepted exceeds the amount of the budgetary provision by 10% or less, the *tender* should not be accepted until the Head of Finance Services is satisfied that budget provision has been made for the additional cost.
- 13.12 If the amount of the tender proposed to be accepted exceeds the amount of the budgetary provision by more than 10% — or if there are revenue consequences not fully provided for — then a report on the scheme, together with a financial statement, must be submitted to the Head of Finance Services and Cabinet who will recommend whether or not the scheme should go ahead.

## 14 Errors and Discrepancies in Tenders

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- 14.1 Where the examination of a tender reveals obvious errors and/or discrepancies which would affect the tender figure(s), the tenderer should have the opportunity to correct the error. If the tenderer withdraws, the remaining tenders should be considered for acceptance in the usual way.
- 14.2 This facility is not to be used as a second opportunity to submit a price.

## 15. Notifying Tenderers, Standstill Period and Contract Award Notice

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### EU Procurement

- 15.1 For all supplies, works and most service contracts tendered under Public Procurement Regulations, a ten-day 'standstill period' must be observed between the decision to award and contract conclusion. Once the decision to award a contract is made, **after you have received all necessary approvals**, each tenderer must be notified in writing on the outcome of the tender process. This includes all those tenderers who submitted a PQQ or an expression of interest prior to PQQ. This notification must include:
- Details of the contract award criteria;
  - Where practicable, the total score the tenderer obtained against those award criteria;
  - Where practicable, the total score the winning tenderer obtained; and
  - The name of the winning tenderer.

[Templates](#) are available from Corporate Procurement and in [The Chest](#).

- 15.2 There must be a minimum of 15 calendar days between the despatch of this notification and the conclusion of the contract. Special rules apply where a tenderer requests a debrief on the tender process, this must be carried out before contract award. Even in the event of a tenderer asking for a debrief outside of the standstill period, we are still obliged to provide this. In this instance, advice must be sought from the Corporate Procurement Manager at the earliest opportunity.
- 15.3 All contracts awarded under Public Procurement Regulations must be announced by means of a Contract Award Notice in OJEU (Official Journal of the European Union) , transmitted no later than 48 calendar days after the date of award.

#### **Part B and Non-EU procurement**

- 15.4 Notification — on contracts not subject to the full Public Procurement Regulations (that is contracts for Part B Services or contracts below the EU procurement thresholds):
- a. **After you have received all necessary approvals**, including notifying Legal and Democratic Services, you must write and tell the successful tenderer your decision as soon as possible;
  - b. You must tell unsuccessful tenderers only after you have told the successful tenderer, and the successful tenderer **has accepted**.

[Standard letters](#) are available from Corporate Procurement and in [The Chest](#).

- 15.5 If unsuccessful tenderers query why their tender was not successful, they can be informed in general terms about the areas of their tender which scored well and poorly in your assessment. You should do this within 15 working days of the request. Details of the other tenders should always be omitted. The name of the successful tenderer and the value of their bid will be made available to the public.

[Standard letters](#) are available from Corporate Procurement and in [The Chest](#).

#### **Debriefings**

- 15.6 On contracts not subject to the full Public Procurement Regulations it is good practice to provide a debriefing to any unsuccessful tenderer who requests one. Wherever possible this should be done within 15 working days of the date the request was received.
- 15.7 On contracts subject to the full Public Procurement Regulations you must provide a debriefing to any unsuccessful tenderer who requests one. The time limits for providing a debrief will depend on when the request is received.
- a. Requests received within the first two working days of the standstill period: Debrief at least two working days before the end of the standstill period. You may need to extend the standstill period around public holiday periods.
  - b. Requests received outside of this period: Debrief within 15 working days of the date the request was received.
- 15.8 The debrief must inform the tender of the reasons why he or she was unsuccessful, and, if the tenderer submitted was an admissible tender, you must inform him of the characteristics and relative advantages of the successful tenderer.

## 16. Complaints and Challenges

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- 16.1 If an unsuccessful tenderer feels aggrieved by the decision that has been made and believes that we have acted improperly, they may commence a legal action against the Council. They are required to commence proceedings within three months of the contract award. However, the courts have, in certain circumstances, extended this period where it has been equitable to do so. You should notify Legal and Democratic Services if you have any concerns about a prospective complaint being made.
- 16.2 A successful claim can result in damages being awarded and the contract being set aside. In the event that a contract is set aside the procurement process would start again.
- 16.3 The European Commission can also investigate any apparent breaches. In the UK, any action it takes will originate as an action against the government and will be dealt with by HM Treasury.

## 17 Conditions and Assignment of Contract

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- 17.1 Every contract for the supply of goods or services exceeding £50,000 should be in writing and signed by at least two Officers of the Council, authorised by the Head of Legal and Democratic Services. Below £50,000, three quotes are sufficient, and if no contract is in place the purchase order must be raised via eProcurement.
- 17.2 Every contract for the execution of work exceeding £50,000 must be in writing and under seal.
- 17.3 All transactions must use an appropriate model form of contract approved by the Corporate Procurement Manager having approved these in advance with Legal and Democratic Services, or a form determined by the Service Manager after consultation with the Borough Solicitor.
- 17.4 For all contracts for services estimated at a value over £50,000 or where the services are of an unusual or complex nature — including PFI's or PPPs — Legal and Democratic Services must be engaged to provide advice to produce a suitable set of contract conditions before inviting tenders.
- 17.5 The Corporate Procurement Manager must:
  - a. Keep a record or list of all model sets of conditions of contract which gives details of when the conditions were last updated, who is responsible for their updating and contact references;
  - b. Review all current conditions of contract at least every 18 months to 2 years with Legal and Democratic Services, or when new legislation is introduced;
  - c. From time to time, monitor and review conditions of contract issued by other organisations;
  - d. Keep a record of all framework arrangements and joint working arrangements with other departments, Councils and other organisations, and update this record on a regular basis at a frequency of no less than twice per year;

- e. Maintain the Council's records set out in the relevant section on the intranet;
- f. Ensure that information is circulated and appropriate access for Service Managers is given to local or joint framework arrangements and call-off contracts.

All Officers must: use The Chest to store relevant Contracts and Contract Monitoring information as agreed with the Corporate Procurement Manager.

- 17.6 In every written contract for the execution of work or the supply of goods or services, there must be a provision that prohibits the contractor from transferring or assigning any portion of the contract without the written permission of the Council. Any permission granted may be subject to terms and conditions as considered appropriate by the Service Manager in consultation with the Head of Legal and Democratic Services.

## 18 Exemptions

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- 18.1 Tenders are not required to be invited where:

- a. In the case of contracts for the supply of goods or services, the Borough Solicitor, after consultation with the Leader and Deputy Leader, is of the opinion that there would be no benefit to the Council in inviting tenders. All exemptions granted will be recorded by Corporate Procurement;
- b. The work to be executed, or the goods or services to be supplied, form an extension of an existing contract, which must be approved by the Borough Solicitor after consultation with the Leader and Deputy Leader, and Corporate Procurement must be notified;
- c. Contracts for the supply of goods or services, extensions required for unavoidable operational reasons are to be at the discretion of the Corporate Procurement Manager in consultation with the Borough Solicitor.
- d. Tenders have been invited on behalf of any public consortium or similar public body in accordance with any method adopted by such a body, for example, framework agreements.
- e. Where an existing contract for the provision of goods and services is available and the Council can legally take advantage of the provisions therein, for example framework agreements and existing contracts negotiated by Corporate Procurement on behalf of RMBC. Regard to value for money and the most economically advantageous terms should still be considered prior to taking advantage of any existing contract.

- 18.2 Exemptions from these Rules must be obtained in advance in line with the relevant procedure. (See 18.4 below.)

- 18.3 An exemption cannot be given for EU procurement.

- 18.4 After considering a written report by the Corporate Procurement Manager, an exemption may be agreed by the appropriate persons if they are satisfied that the exemption is justified because:

- a. The nature of the market for the works to be carried out, or the goods or services to be provided, has been investigated and is demonstrated to be such that a

departure from the requirements of the Rules is justifiable, for example, if there is no real competition;

- b. The contract is for works, supplies or services which are required in circumstances of extreme urgency which could not reasonably have been foreseen; or
- c. Extending an existing contract; it must be in our interests to negotiate with the existing supplier and must be tied to the Scheme of Delegation;
- d. Price control — if the price is controlled by trade organisations or government order, and there is no reasonable alternative;
- e. Repairs or parts — if the only option is to repair or buy new parts for existing equipment or buildings, and there is only one supplier;
- f. Purchase is to be made by auction or at any public fairs or markets;
- g. Purchase is for a patented article;
- h. The Purchase has been agreed by the Cabinet or ELT (Executive Leadership Team) to be for the good of the Authority;
- i. There are other circumstances which are genuinely exceptional.

18.5 To apply for an exemption, you must fill in an exemption form which must be signed (electronically or by hand) in accordance with the Council's Scheme of Delegation. It should be sent to those with authority to approve exemptions as set out in the Council's Scheme of Delegation. Plenty of time must be allowed for your application to be considered, and to allow for tendering if your application is refused.

18.6 A record of the decision approving an exemption and the reasons for it must be listed in the appropriate register along with the evidence to support the exemption.

18.7 If exemption has been granted to these rules, the e procurement guidance must be followed. Failure to do so could be a disciplinary offence.  
[Intranet](#)

18.8 The Corporate Procurement Manager must hold a complete record of all exemptions and submit a regular report to the Cabinet.

## **19 Nominated Sub-Contractors and Suppliers**

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19.1 No nomination of a sub-contractor for the execution of specialist work, or a supplier for the supply of goods or services for which a prime cost sum is included in the main contract sum for building or civil engineering works, can be made unless the tenders for the specialist work, goods or services have been obtained in line with these Contract Procedure Rules.

19.2 Where the Council has appointed a supplier for goods or services of the kind in question, the appropriate Service Directors will be authorised to nominate which supplier if it is considered appropriate.

19.3 Where paragraph 18.2 above does not apply, and the prime cost sum included for any item does not exceed £100,000, the appropriate Service Directors shall deal with the nomination as if it were a low value contract.

19.4 Every written contract over £5,000 should also include reference where appropriate to:

- ❖ Risk assessment / management;
- ❖ Liquidated damages;
- ❖ Value for Money;
- ❖ Security (from bank)/ Guarantees;
- ❖ Data Protection and Freedom of Information;
- ❖ Equality and Diversity;
- ❖ Service contracts;
- ❖ CRB checks where required;
- ❖ Goods/services to be provided and cost;
- ❖ Exit strategy;
- ❖ Anti-Bribery and Anti-Corruption;
- ❖ Contract Management arrangements — i.e. performance standards and monitoring arrangements;
- ❖ Insurance;
- ❖ Indemnity.

## 20. Transfers of Contracts

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20.1 In appropriate circumstances, the Council may agree to transfer a contract.

20.2 This decision must be taken by the Cabinet for contracts of a value in excess of £250,000 (or the relevant Committee for non-executive functions), and by the relevant Service Directors for contracts of a value of up to £250,000. Agreement must also be obtained from the Corporate Procurement Manager.

20.3 The Corporate Procurement Manager must hold a complete record of all transfers, and submit a regular report to the relevant Cabinet meeting.

## 21. Variations and Extensions

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21.1 Subject to any statutory restrictions and compliance with these Rules, a Service Manager may authorise the following, in conjunction with Corporate Procurement, extensions and variations to an existing contract, either:

- a. An extension for a particular period provided for within the terms and conditions of the contract (but subject to satisfactory outcomes of contract monitoring); or
- b. A single extension of the contract by up to six months, or half the contract term (whichever is less); and
- c. Any other variation, and, if relevant a consequent change in price, determined in accordance with the contract terms.

21.2 In any other circumstances the Service Manager may vary or extend a contract, providing that to do so is consistent with the provisions of Financial Regulations.

21.3 Contracts procured under the EU Regulations must not be extended or varied without consulting the Corporate Procurement Manager.

21.4 It is good practice to detail within the original contract if it can be extended, along with details of how long the extension is in place for.

## 22 Disposal of Assets

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### Goods

22.1 Please consult Corporate Procurement before disposing of any goods to ensure the latest guidance is followed.

### Land

22.2 Land or premises transactions and related negotiations shall only take place at the explicit consent of the Council's Head of Property Services (Director of Property, Impact Partnership) and the Borough Solicitor has been informed.

22.3 Where the Council decides that land or premises will be disposed of by competitive tender then:

- a. The procedure for the receipt, custody and opening of tenders, and for dealing with late tenders, will be in line with sections 9-11 as appropriate;
- b. All persons on whose behalf a tender is submitted, must declare whether they are members or employees of the Council or whether they are related to a member or employee of the Council. Failure to make a declaration, or making a false declaration, will invalidate the tender;
- c. A tender may be accepted in accordance with the relevant provisions of section 10, provided that in the event of there being a proposal to accept a tender from a member or employee of the Council or a relative of such a person, this shall be referred to the Cabinet for consideration.

22.4 Where the Council decides that land or premises are to be disposed of at auction, then the Council's Head of Property Services (Director of Property, Impact Partnership) will have the authority to appoint and instruct independent auctioneers. Reserve prices will be agreed between the Head of Property Services and the auctioneers in conjunction with the Head of Finance. A schedule of land and premises disposed,

auctioneers used, reserve prices, and achieved receipts will be reported retrospectively on at least an annual basis.

- 22.5 Where there is a proposal to dispose of land or premises to a member or employee of the Council other than by a competitive tender, and the disposal is, in the opinion of the Chief Executive, not a routine disposal, the proposal shall be referred to the Cabinet for consideration, and a full report shall be made thereon by the Council's Head of Property Services (Director of Property, Impact Partnership) on the proposal.
- 22.6 In the case of minor disposals (less than £5,000), the Council's Head of Property Services (Director of Property, Impact Partnership) has the authority to decide whether or not to deal with an individual, and will be empowered to advise any interested parties that a particular property will not be considered for disposal for any period up to one year, unless exceptional circumstances cause a dramatic increase in value.

## 23 Employment of Consultants or Temporary Staff

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### Consultants

- 23.1 The employment of consultants falls within the definition of a contract for services and must comply with the contract procedure rules. Service Directors must follow the procedure for approval by contacting Corporate Procurement and referring to the eProcurement Intranet page.

Services must wait for the approval of two Executive Directors before entering into any consultancy contracts.

### Temporary Staff

- 23.2 The Council participates in a Greater Manchester conglomerate for the procurement of agency staffing. This ensures we access temporary staff at competitive rates of pay. Services using agency staff must do so through the contractor's website. Please refer to corporate procurement for further guidance or follow the link from the eProcurement Intranet page.

Link to [Intranet](#)

## 24 Partnerships and Joint Working

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- 24.1 Collaborative and partnership arrangements are subject to the Public Procurement Regulations and must also comply with these Contract Procedure Rules.
- 24.2 Collaborative and partnership arrangements include joint working where one partner takes the lead and awards contracts on behalf of the other partners, long-term collaborative partnerships, pooled budgets and joint commissioning.
- 24.3 Further guidance can be obtained from the Business Partnerships Service.
- 24.4 All Partners purchasing on behalf of the Council should follow these Contract Procedure Rules unless an exemption is approved by the Corporate Procurement Manager.

## 25 Antibribery and Corruption

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- 25.1 In every written contract, a clause must be included to record that the Council can cancel the contract and recover the amount of any loss resulting from :-
- a. cancellation by the contractor;
  - b. the contractor offering any gift or consideration as an inducement or reward for having obtained the contract;
  - c. the contractor committing any offence under the Prevention of Corruption Acts 1889 to 1916, or any amendment of them;
  - d. the contractor giving any fee or reward, the receipt of which is an offence under the Local Government Act 1972.

## 26. Declarations of Interest

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- 26.1 Any interest which may affect the award of a contract under these Rules must be declared. Officers must declare to their line manager any interest which could influence their judgement in contracting matters. Officers must also record their interest — or any interest held by a close family member — in the Staff Register of Interests which is updated annually.
- 26.2 Where an officer has an interest which could influence their judgment in contracting matters, he or she must not take part in the contracting process.
- 26.3 No gifts or hospitality should be accepted from any tenderers to any contract being let by the Council, and to do so is a disciplinary offence. You must inform the Borough Solicitor if you are dealing with a contract for the Council and have been offered such a gift or hospitality.
- 26.4 All officers involved in contracting matters must have regard to the [Employee Code of Conduct](#) which can be obtained from People Management Service.

## 27 Risk Management and Security for Performance

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- 27.1 Risk needs to be managed rather than avoided, and consideration of risk should not stifle innovation. The Council recognises that it has to deliver services in an increasingly litigious and risk-averse society. However, risk management is a tool for exploiting opportunities as well as a safeguard against potential threats. The Council needs to, therefore, use risk management to promote innovation in support of the Council's strategic objectives, as detailed in Aiming High.
- 27.2 The early identification and management of risks will therefore be of particular importance in the achievement of successful innovation.
- 27.3 To minimise the risk of loss to the Council through the letting of contracts, all contracts for work must have provision for liquidated damages to be paid by the contractor in the event that the terms of the contract are not delivered.

27.4 Parent Company Guarantees or Performance Bonds will only be required where the Head of Finance and the appropriate Service Directors consider it necessary in the circumstances.

27.5 In every written contract which exceeds £5,000 in value or amount, a clause must be inserted to ensure that, should the contractor fail to deliver the goods or services within the time specified in the contract, the Council can claim default. The clause shall also ensure that the cost of purchasing other goods or services in excess of the amount which would have been payable to the contractor in respect of the goods or services, will be recoverable from the contractor.

## 28 Contract Form and Signing

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### 28.1 Contract Form

Once you have selected a supplier, the Contractual Arrangements needs to be completed.

You must check whether there is an [approved format](#) for entering the contract which has been approved by the Corporate Procurement Manager or Borough Solicitor.

In the event of there being no approved format, or you need to make changes to an approved format your draft or details of the changes need to be sent to the Corporate Procurement Manager or Borough Solicitor.

All ordinary and major contracts must be in writing and must meet the [contract requirements](#) set out by Corporate Procurement. A number of templates are available for use, and Council Terms and Conditions should always be used where possible. Electronic copies should be sent to Corporate Procurement for reference.

Each Service Director must ensure that the contracts within his or her Service are:

- a. Legal;
- b. In line with financial regulations;
- c. Drafted properly;
- d. Appropriate; and
- e. Are able to protect the Council's interests fully.

### 28.2 Certified Contracts

If a supplier asks us to certify that the contract is legal, the contract must be passed onto the Borough Solicitor before being signed. Details of the approval for the contract and any other relevant documents must also be sent.

### 28.3 Signing Contracts

You must ensure that the contract is signed by a properly authorised officer, as outlined in the Council's Scheme of Delegation.

All major contracts must be either:

- a. Sealed by the Council and witnessed (signed) by a designated officer; or
- b. Signed by two designated officers.

A Designated officer means the Chief Executive, the Borough Solicitor and any other officer authorised by either or both of them.

## 29 Performance Monitoring

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- 29.1 During the life of the contract, the Authorised Officer should monitor the contract in respect to the following:
- a. Performance;
  - b. Compliance with specification and contract;
  - c. Cost;
  - d. Any Best Value requirements;
  - e. User satisfaction; and
  - f. Risk management.
- 29.2 Where the contract is to be re-let, this information should be available early enough to inform the approach to re-letting the next contract.
- 29.3 Corporate Procurement can advise on good practice in performance management.

### Definitions

<b>Agent</b>	A person or organisation acting on behalf of the Council or on behalf of another organisation.
<b>Appropriate Committee</b>	Shall mean, in the case of contracts for the execution of work or for the supply of goods or services, the Cabinet.
<b>Appropriate Service Directors</b>	Shall include the relevant Director of the Impact Partnership in the case of contracts for the execution of work, and the Corporate Procurement Manager in the case of contracts for the supply of goods or services, and includes all officers' designated by the Executive Director to deal with the contract in question.
<b>Award Criteria</b>	The criteria by which the successful <i>Quotation</i> or <i>Tender</i> is to be selected.
<b>Best Value</b>	Compliance with the duty required by Part 1 of the Local Government Act 1999, which places a duty on local authorities to secure continuous improvement in the way which functions are carried out, having regard to economy, efficiency and effectiveness.
<b>Borough Solicitor</b>	As defined in the <a href="#">Constitution</a>
<b>Chief Executive</b>	As defined in the <a href="#">Constitution</a>
<b>Committees</b>	A committee which has power to make decisions for the council i.e. Overview and Scrutiny Committees, Township Committees, as defined in the <a href="#">Constitution</a> .
<b>Constitution</b>	The document approved by the <i>Council</i> which: <ul style="list-style-type: none"><li>❖ allocated power and responsibility within the council and between it and other parties;</li><li>❖ delegates authority to act to the <i>Executive</i>, <i>Committees</i> and Officers;</li><li>❖ regulates the behaviour of individuals and groups through rules of procedure, codes and protocols.</li></ul>
<b>Consultant</b>	Someone employed for a specific length of time to work to a defined project brief and deliver clear outcomes; someone who brings specialist skills and knowledge to the role and where the Council has no ready access to employees with the skills, experience or capacity to undertake the work.
<b>Contract</b>	Shall include all contracts, agreements, partnership arrangements, private finance initiatives, joint ventures or other arrangements.

<b>Corporate Contract</b>	A contract let by the Council to support the Council's aim of achieving Value for Money.
<b>Corporate Procurement Manager</b>	Officer with the responsibility for ensuring the Council's procurement practices and procedures (i.e. Corporate Procurement Strategy) are adhered to.
<b>Council</b>	The Council's full Council as defined in the <a href="#">Constitution</a> .
<b>Director of Impact Partnership</b>	Officer who 'heads up' the Impact Partnership.
<b>EU Procedure</b>	The procedure required by European Union (EU) where the Total Value exceeds the EU Threshold.
<b>EU Threshold</b>	The contract value at which the European Union (EU) public directives apply.
<b>Executive Director</b>	As defined in the <a href="#">Constitution</a> .
<b>Execution of Work</b>	The execution of work of all kinds, and includes works of building, engineering, construction and the execution of work arising from the council's compliance with the duty of Best Value.
<b>Executive</b>	The Council's Executive (also known as the Cabinet) as defined in the <a href="#">Constitution</a> .
<b>Financial Regulations</b>	A document that provides the framework for financial management within the council.
<b>Goods and Services</b>	All goods, equipment, materials and services, and includes services resulting from the Council's compliance with the duty of Value for Money.
<b>Head of Finance</b>	The most senior officer representing the <b>Chief Finance Officer</b> or designated by him/her to provide financial advice.
<b>Impact Partnership</b>	A Joint Venture Partnership between Rochdale MBC, Mouchel Parkman Agilisys. The Partnership delivers Highways and Engineering, Property and Customer & Business services on behalf of Rochdale MBC to support the regeneration of Rochdale Borough over a 15-year period. <a href="#">Impact</a> Intranet page.
<b>Invitation to Tender</b>	Invitation to tender documents in the form required by these CPR.
<b>Key Decision</b>	Decisions that are defined as key decisions in the <a href="#">Constitution</a> .
<b>Most Economically Advantageous Tender (MEAT)</b>	A method of contract evaluation that allows the Council to take into account both price and quality criteria. It is the

most flexible evaluation method (as contrasted to the lowest price), and all contracts should be evaluated by this method, even where price is the primary consideration.

**Monitoring Officer**

As defined in the [Constitution](#).

**Potential Contractor**

Any person who asks — or is invited — to submit a Quotation or Tender.

**Procurement Strategy**

A document which builds on, and brings together, existing procurement policies and procedures and refers to the council's CPR and *financial procedure rules*. The document addresses the procurement requirements of *Best Value*, and is designed to ensure consistency in approach in the acquisition of all work, goods and services. Link to [Corporate Procurement](#).

**Quotation**

A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).

**Shortlisting**

The process of selecting potential suppliers who are invited to quote or bid or proceed to final evaluation.

**Tender**

Shall include all offers, quotations, proposals, submissions or other bids for contracts.

**Total Value**

The whole of the value or estimated value shall be calculated as follows:

- ❖ Where periodical payments are to be made by the Council, by reference to the maximum total amount that the Council may be obliged to pay under the terms of the contract;
- ❖ Where an undefined quantity of work, goods or services is to be executed or supplied under the terms of the contract, by reference to an estimate of the total value of the contract, provided by the Appropriate Service Directors.

**TUPE**

Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the authority is transferred from one organisation to another, and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions with the benefit of continuity of employment, as existed with their former employer. Broadly, TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006) ensure that the rights of employees are transferred along with the business.

**Value for Money**

Value for money is not the lowest possible price; it combines goods or services which fully meet your needs, with the level of quality required, delivery at the time you

need it and at an appropriate price (see MEAT (Most Economically Advantageous Tender) above).

## Goods

A **public supply contract** is a contract:

For the purchase of 'goods' ('Goods' do not include land 'or the product of an activity'), or

The hire of 'goods' with or without the sitting or installation of those 'goods'.

## Works

A **public works contract** is a contract:

For the carrying out of a 'work' or works, under which the authority engages a person to procure a work 'by any means' (see below for definition).

A "**work**" is defined as including:

- ❖ Building and civil engineering work
- ❖ Construction of office blocks, hospitals or other buildings;
- ❖ Civil engineering construction of roads, bridges, railways;
- ❖ Installation work of, for example, heating and electric equipment;
- ❖ Completion work such as tiling and papering;
- ❖ Maintenance of buildings.

The following activities may also be regarded as a **works contract**:

- ❖ A contract where an authority engages a provider to act as agent for the authority in letting contracts
- ❖ An agreement where a developer constructs a building on its own land (according to an authority's needs), and undertakes to transfer the land and structure to the authority upon completion or at a later date.

## Services

A **public services contract** is one under which the authority 'engages a person to provide services'. The Services Regulation divides services into two categories: 'Part A Services' and 'Part B Services'.

Part A Services are listed in Part A of Appendix 2.

Contracts for Part A services are subject to the Regulation, including tendering procedural rules, specifications, pre-qualifications, etc.

'Part B Services' are subject only to limited provisions. Rules on technical specifications, contract award notices, and submission of statistical reports. Part B Services are all those services set out in Part B of Appendix 2, to the services Regulation. In addition, they include all those services that fall outside of Part A.

Where a contract involves both Part A and Part B Services, its classification is determined by the service that has the greatest value of the contracts. See the Guidance for detailed lists of Part A and Part B services.

### Different Types of Services Contract

There are two different types of services in the Regulations. Depending on what category your services fall into, different parts of the Regulations will apply.

#### **'Part A Services'**

Include maintenance, transport, property management services, telecoms, financial and accounting services, IT services, research and development, market research, advertising, management consultancy, architectural services, printing/publishing, building cleaning, and waste disposal.

Part A Services are listed in Part A of Schedule I of the Regulations. Contracts for Part A Services are subject to the Regulations, including tendering procedural rules, specifications, pre-qualifications, etc.

#### **'Part B Services'**

Include Legal and Democratic Services, restaurant/hotel services, personnel placement and supply services, rail/water transport, investigation and security services, educational, and health and recreational services.

Part B Services are subject only to limited provisions — rules on technical specifications, contract award notices and submission of statistical reports.

Part B Services are all those services set out in Part B of Schedule I to the Regulations. In addition, they also include all those services which fall outside of Part A.

#### **Limited Application of Procurement Rules — Part B Services**

Technical specifications: There must be no discrimination created by specifying standards which are UK-based. Equivalent standards must be considered:

Contract award notice must be placed; and

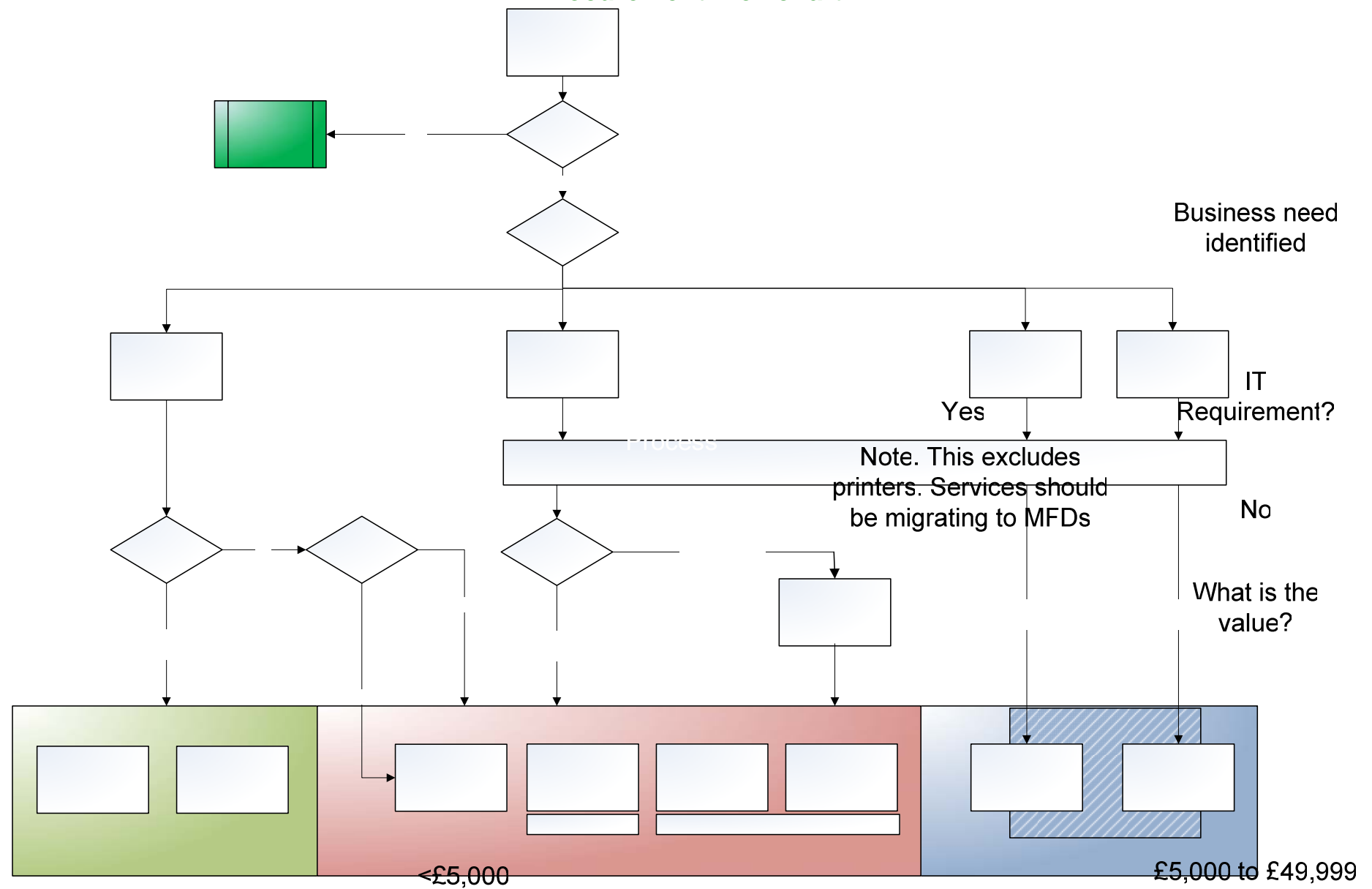
Reports to Commission: Statistics on the contract let and the procurement must be kept in the event that they are requested by the EU Commission.

Treaty principles must be adhered to: non-discrimination, transparency and equality of treatment, which this may require some public advertising according to recent case law.

Where a contract is for both Part A and Part B Services, its classification is decided by which Part represents the larger value.

Further guidance on the categories of Part A and Part B Services can be found on <http://simap.eu.int> under the section of CPV codes.

### Procurement Flowchart



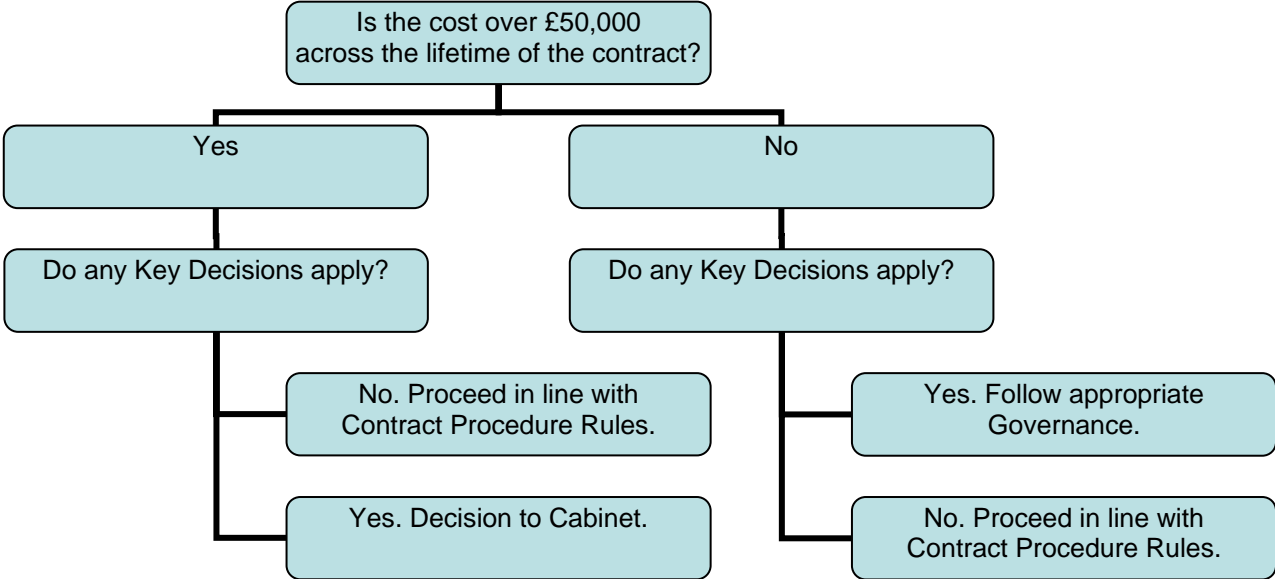
# Spend Considerations

## Spend Considerations

- Low value/risk <5k
- Mid value/risk <50k
- High value/risk >50K
  
- Spend review options
  - eProcurement catalogue
  - P-card – lodge virtual card
  - P-card – personal card
  - P-card – team card
  - Pre-payment card
  - Tender
  - In-service provision
  - Stop

## Tender options

- Collaboration:
  - AGMA
  - OGC
  - Other PO
- Tender:
  - AGMA lead
  - Own (include wording in OJEU to allow others to join for efficiencies post contract)



## Hard Copy Tenders

### Inviting Tenders

- All tenders from suppliers will be submitted electronically via The Chest unless the tenderer is unable to do so. In this instance, prior approval must be gained from Corporate Procurement.
- If this is the case, their tender should be submitted to the Town Hall at the same time and date stipulated in The Chest. The supplier must, in this instance, provide at least one hard copy and one electronic copy on disc.
- In the case of any dispute the electronic copy will take precedence. Guidance is also available from Corporate Procurement and available via The Chest for suppliers in respect of preferred formats for electronic documents.

### Returning Hard Copy Tenders

- All tenders should be returned in unmarked envelopes, clearly referenced to the relevant tender (usually by the template provided by Corporate Procurement), to prevent identification to the Corporate Procurement Manager, either by hand or by post).
- Tenders should be stored securely and unopened once returned, until the appointed time.
- At the specified time and date, all tender envelopes for the contract should be opened. There must be at least two officers present, including the Corporate Procurement Manager or suitably qualified representative, and a representative from the appropriate Service, in line with the Scheme of Delegation.
- When opened, each bid should be stamped and initialled by the officers present.
- The following details should be recorded at the time of opening in a register:
  - ❖ Title and reference of the contract;
  - ❖ Name of each tenderer;
  - ❖ Date and time of receipt;
  - ❖ Prices;
  - ❖ Names of officers present at opening;
  - ❖ Date and time of opening;
  - ❖ Reasons for rejections (e.g. damaged or un-identifiable bids);
  - ❖ Details of suppliers failing to bid;
  - ❖ Late tenderers (see 12 above).
- Both the bid document and the register should be initialled.
- Late tenders cannot be accepted. See below for how to treat them.

### Opening Hard Copy Tenders

- You must open all tenders at the same session. Open them one at a time. Each officer must sign and date hard copy tenders, and all details of each tender should be recorded on a [tender return form](#), which each officer must sign and date.
- The officers opening the tenders must sign the total price page. Where the prices are not contained in a single page, or where other pages contain relevant pricing information (e.g. hourly or discounted rates), all relevant pages containing pricing information must be signed.
- Once the tenders have been opened, they need to be stored again in a safe place for six years under Document Retention requirements.

### Late Tenders and PQQs (Pre-Qualification Questionnaire)

- Late tenders sent to the Town Hall after the agreed time and date for submission, should be recorded on the register, stored securely, and unopened with the time and date of receipt clearly marked. These will need to be stored for 6 years from the intended procurement date, in line with document retention rules. Once the contract has been awarded and the successful tenderer has accepted, you can open the late tender or PQQ and inform the tenderer that his bid was not considered because it had arrived late.
- Where enquiries are made regarding a late tender or PQQ requiring it to be opened for identification, at least two officers should be present.
- If you open a tender by mistake before the deadline, write down how this has happened. In the case of tenders received by post or hand, attach this to the packaging and re-seal the tender immediately. In the case of electronic tenders, keep a copy on the contract file. In all cases, do not tell anyone about the contents of the tender.
- If you receive fewer tenders than expected, do not contact tenderers to ask whether they have sent one in.

For further Assistance please contact

Georgina Jones	Corporate Procurement Manager	925480
Wendy Ready	Assistant Head of Finance (Business Services)	925443
	Assistant Borough Solicitor	924737