



CONTRACTS PROCEDURE RULES

(May 2008)

CONTENTS

1. INTRODUCTION
2. CONTEXT
3. BEFORE WE START
4. HOW WE BUY THE THINGS WE NEED
5. THE EU DIRECTIVES
6. INTEGRATING EQUALITY AND DIVERSITY INTO PROCUREMENT
7. TENDERS (HOW TO)
8. CONDITIONS OF CONTRACT
9. PARENT COMPANY GUARANTEES
10. EXEMPTIONS FROM RULES
11. TRANSFERS OF CONTRACTS
12. CONFLICTS OF INTEREST
13. VARIATIONS AND EXTENSIONS
14. IMPACT ON OTHER COUNCIL POLICIES

APPENDICES;

EXPLANATION OF TERMINOLOGY USED IN THIS DOCUMENT

- APPENDIX "A" - EXAMPLE OF FORM OF WAIVER
- APPENDIX "B" - QUICK REFERENCE DIAGRAM OF PROCUREMENT PROCEDURES (HOW WE BUY THE THINGS WE NEED)
- APPENDIX "C" - CURRENT CORPORATE CONTRACTS
- APPENDIX "D" - CURRENT CORPORATE FRAMEWORK CONTRACTS
- APPENDIX "E" - EQUALITIES & DIVERSITIES SUPPLIER/CONTRACTOR QUESTIONNAIRE

1. Introduction

- 1.1 These rules are the Council's procedure rules for buying for the Council ("the Rules"). They do not apply to internal purchases or service provision, only where you need to buy something from outside the Council.
- 1.2 They are the rules by which we spend money on the supplies, services and works we need 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 The difference between supplies, works and services is explained in the Glossary of terms at the end of the Rules.
- 1.4 The Rules apply to any contract that results in a payment being made by the Council as well as to some types of contracts where a service is being provided for the Council which results in some income being generated for the Council.
- 1.5 The Rules also apply to the disposal of surplus goods and to concession contracts.
- 1.6 The Rules do not cover grants which the Council may receive or make (unless the grant is part of a contract for services).
- 1.7 The Rules do not apply to the purchasing of property.
- 1.8 If you are in any doubt about whether the Rules apply, you must always check with the Procurement Manager/Head of Legal, Equalities and Democratic Services
- 1.9 The Council's "best value duty" is very important. It means that we must always consider how each procurement is consistent with the Council's duty to secure continuous improvement in what we do having regard to value for money. We therefore need to question whether we should be buying anything at all and if we do, whether we can do it best ourselves, or jointly, or rely on someone else to get better value.
- 1.10 Government and EU public procurement policy require 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.
- 1.11 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.
- 1.12 The most important principles are transparency, openness and fair competition. Whenever we are buying things for the Council we must always act to promote competition.
- 1.13 Our Rules have three main purposes:**
 1. to comply with the obligations that govern the spending of public money such as the EU procurement regime;
 2. to obtain Best Value in the way we spend money, so that we may in turn offer better and more cost effective services to the public; and

3. to protect people who follow the Rules.

1.14 The 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.
- Reflect the focus that the Council has on providing and demonstrating Value for Money in the provision of services to our residents

This document contains rules and refers to guidance. The Rules should be read alongside the Council's Procurement Guidance and Financial Regulations.

2. Context

- 2.1 The Procurement Manager is responsible for keeping the Rules under review and the Audit Department will monitor compliance.
- 2.2 The European Union sets down (through a Treaty) what the obligations are on us at the Council when we are buying things. The key principle is to ensure "competition" and an appropriate degree of advertising to make sure that everyone in the marketplace 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 think about, for example, e - auctions, e - tendering, Dynamic Purchasing Systems or setting up a framework. Increasingly Councils are collaborating through joint procurements, this Council already works with other authorities in Worcestershire and the wider sector to let Contracts where synergy exists.
- 2.4 If you are buying larger or costly goods, works or services, the Rules for higher value orders and contracts are stricter than for those of lower value. This is so 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.
- 2.5 At the highest end of the value scale, we must follow full EU Public Procurement Directives, requiring us to observe certain additional procedures. In these cases you must consult with the Procurement Manager before you start buying what you need.

3. Before We Start

3.1 The Competitive Process

- 3.1.1 EU law and Government policy says that we must always make sure that we are offering the opportunity to provide supplies works or services to the Council to the whole market to ensure competition.

- 3.1.2 The value of a contract means the estimated total monetary value over its full duration, including any extension options **(not the annual value)**.
- 3.1.3 Where the duration of a contract is indeterminate, this should be taken to be the estimated value of the contract over a period of four years. Contracts should not be artificially split to avoid the values.
- 3.1.4 The thresholds at which the different rules apply are summarised in the Guidance.

3.2 Who can buy things

- 3.2.1 The Procurement Manager can provide you with a document which details limits within which Budget Holders and their authorised Officers may buy things for the Council. These limits must not be exceeded.
- 3.2.2 Budget Holders should ensure that procurement is undertaken by their procurement professionals or, where departments or functions have no specialist capability, by authorised Officers who can demonstrate skills and knowledge appropriate to the task supported and guided by the Procurement Manager. These Officers should already have authority under the Council's Constitution, if not, then they need to be granted authority from the relevant person or body.
- 3.2.3 Each Head of Service must keep a list of authorised Officers who can buy things on his/her behalf, specifying a maximum financial limit for each transaction against each name.
- 3.2.4 The list must be copied to the Procurement Manager
- 3.2.5 Before starting a procurement process, we need to make sure that we have carefully identified the need and fully assessed the options for satisfying it. Before you start, you **must** consider:
- I. what is important to the Council in this procurement? Do you just need the supplies, works or services? Or are there other things you want to bring about (for example, improved environmental performance). In certain cases the procurement regime could help achieve these objectives but you must consult with the Procurement Manager;
 - II. can you buy what you need with another department or another Council? If you think you could save the Council money or achieve other advantages if you bought what you need with someone else, consider if there is an existing framework arrangement or contract which you can use. This framework or contract could be one already set up by the Council, another Council, a joint purchasing body, Consortia or run centrally by Government (examples being OGC Buying Solutions, Eastern Shires Purchasing Organisation "ESPO", Yorkshire Purchasing Organisation "YPO").
 - III. alternatively, there may be some kind of recognised purchasing consortia in place whereby members of the consortia may utilise the purchasing arrangements in order to procure goods and/or services. Note that where there is a consortia in place, you do not have to comply with these Rules, however, strictly only the goods and/or services that are the subject matter of the consortia arrangements may be procured. Where the goods

and/or services are outside the scope of the consortia arrangements you must utilise some other method of procurement in accordance with these Rules. The Procurement Manager can advise you further on this; and

- IV. will you or your partners be buying the same thing more than once? If so, it might be better to create a framework agreement so you can set up suppliers to provide you with the supplies, works or services you need when you need them. Again, could you set up a framework with other departments or Councils or is there already a joint purchasing organisation which could supply your needs?

3.2.6 If following consideration of alternative buying solutions, a joint procurement or other form of collaborative procurement is to be used with another Council, the conduct of the procurement should be on terms no less rigorous than the requirements of these Rules for any Council procurement. The Procurement Manager/Head of Legal, Equalities and Democratic Services of the lead authority must certify in writing to all participating Councils and organisations that no less rigorous a process has been undertaken, prior to the contract start date.

3.2.7 Should you decide that the goods and/or services are likely to be required in the future by the Council, it may be that the best way in which to buy the goods and/or services is by setting up a framework agreement. There are many types of contracts which will be suited to a framework arrangements and it is important that you see the Procurement Manager before commencing the procurement to ensure that the type of contract being used is most suitable.

3.3 Defining the Need

3.3.1 As a minimum, you must clearly and carefully specify the supplies, services or works to be supplied, the agreed programme for delivery and the terms for payment together with all other terms and conditions that are agreed. You also need to ensure that you will have the funds in the budget to pay for them.

3.3.2 This means you must decide in advance of the competitive process the size, scope, and specification of the supplies, service or works required. If you are buying with someone else, you must decide this scope with your partners first.

3.3.3 You should always consider the Procurement Guidance and you must refer to and abide by any other Council policies which could apply to what you want to buy. If in doubt, you must check with the Procurement Manager

3.4 Purchase Strategy

3.4.1 Once the need is determined, you must determine a contract strategy by which the supplies, works or services will be acquired. This means taking a step back from the traditional procurement process and assessing the options particularly to the provision of services.

3.4.2 Under Best Value legislation, you must consider options for the delivery of supplies, works or services. The options for supplies, works or services are:

- I. not buying the supplies, having the works done or providing the services at all;

- II. providing the goods, works or services ourselves (for example, by taking surplus supplies from another department or using their staff);
- III. getting someone else to provide the ongoing supplies, works or service (“outsourcing”/ provision by the private, voluntary, “third” sectors or another local authority or public body);
- IV. providing the supplies, works or services in partnership with someone else (with the private, voluntary, “third” sectors or another local authority or public body);
- V. by commissioning jointly with another Council; and / or
- VI. shared service delivery with another Council i.e. by delegating our functions to another Council, setting up a Joint Committee or setting up a new company to deliver the services for us or with other authorities jointly.

4. How We Buy the Things We Need

4.1 Full Tender Procedures (not over the EU thresholds)

- 4.1.1 For purchases valued at over £50,000 a full and formal tender process must be conducted in the manner outlined below and prior approval of the proposed tender process must be sought from the Procurement Manager. A full suite of standard documents to be used, including the relevant Council Terms and Conditions, is available on the Intranet under ‘Procurement’ and ‘Tender Documentation’
- 4.1.2 The procedure to be followed must be determined prior to advertising and must be one of the following:
 - I. open tender (all interested contractors submit a tender in response to an advertisement);
 - II. restricted procedure (expressions of interest from interested contractors in response to an advertisement, with a selection of those contractors being invited to submit a tender);
 - III. negotiated procedure (expressions of interest from interested contractors in response to an advertisement, with a selection of those contractors being invited to negotiate); or
 - IV. where a Framework arrangement (including approved lists) exists in respect of the subject matter, tenders shall be invited using the Framework arrangement from capable contractors having regard to the principles of Best Value.

The minimum number of Bidders to be invited will depend upon the type of contract to be let and this will be advised by the Procurement Manager

4.2 Intermediate-value transactions

- 4.2.1 For transactions valued over **£10,000 below £50,000**, at least three written quotations must be invited before a purchase order or contract is issued,

specifying the supplies, services or works and setting out prices, terms and conditions of contract and terms of payment.

4.2.2 Emailed quotations are acceptable in these cases but copies must be retained on the relevant file.

4.2.3 If only one quotation is received you **must** to seek some more quotations or obtain an **exemption** from the Rules in accordance with section 9 (Form of Waiver). Receipt of two comparable quotations will be sufficient.

4.3 Lower value transactions

4.3.1 For transactions valued at **between £5,000 and £10,000** at least three written quotations must be obtained from a supplier before a formal purchase order is issued specifying the supplies, services or works and setting out prices and terms of payment unless a framework already exists. If a framework already exists then you **must** follow the procedure set out in that framework.

4.3.2 For purchases up to the value **of £5,000** you must, unless you are purchasing from an existing Corporate Contract (**see current list at Appendix "C"**) provide evidence of competitive enquiries being undertaken with details of your final selection criteria recorded and retained on file.

4.4 In all cases

4.4.1 Your purchase order **must** contain the standard form of 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.

4.4.2 Emailed quotations are acceptable for lower value purchases but copies must be retained on the relevant file.

SEE ALSO Appendix "B" - Visual Procurement Procedure's for a quick reference guide

4.5 Framework agreements

4.5.1 Framework agreements for supplies and services must be used where they exist, regardless of value. A list of current Corporate Framework Contracts is available at Appendix "D"

4.5.2 Framework agreements are agreements with suppliers for the provision of supplies, works or services on agreed terms for a specific period for estimated quantities against which orders may be placed if and when required during the contract period. They offer benefits of bulk-buying, improved service and reduced administration costs over the period of the arrangement.

4.5.3 A framework agreement may have the option for you to hold a "mini - competition" with all of the suppliers on the framework when you come to buy for the Council.

4.5.4 You must investigate whether call-off contracts or frameworks are relevant in your own case as you could get better value for the Council by using an existing framework (and if relevant the central Government agreements) and that you can properly use them.

4.5.5 If there is not a framework already in place (or if one does not exist with partners which you can use) then you **must** consider if it would be better value to set up a framework. This is likely where you are going to need to buy the same or similar things again in the future. Guidance on how to set up a framework is in the Procurement Guidance and you should liaise with the Procurement Manager

4.6 Electronic Procurement

4.6.1 An approved Purchasing Card should always be used in preference to paper purchase orders wherever appropriate.

4.6.2 Electronic procurement (or “e-procurement”) systems should always be used in preference to paper transactions.

4.7 Concession Contracts

4.7.1 A Concession Contract is used where the Council wishes to engage a party to provide a service within the Council area, consideration for which is in the form of the party (“the concessionaire”) being given a right to charge the public for the services being provided.

4.7.2 The EU procurement rules do not apply to public works concessions for which the estimated value is under the relevant EU threshold and there are a number of exemptions where a public works concession contract is proposed.

4.7.3 Where the concessionaire intends to sub-contract the performance of services the concessionaire may in certain circumstances fall within the scope of the EU procurement rules. In all cases, where the concessionaire is procuring goods and/or services as a part of the concession contract, any procurement should be carried out in accordance with these Rules.

4.7.4 Advice from the Procurement Manager must be sought before engaging in any procurement relating to a concession contract.

5. The EU Directives

5.1 Additional requirements for transactions valued over EU thresholds

Contract values (excl. VAT) above which procedures governed by the EU Directives apply are currently (applicable from 1st January 2008):

For supplies and services (including goods and consultancy services):	£139,893
For works:	£3,497,313

(Please note that these thresholds are amended bi-annually in January and you must refer to the Procurement Manager to check the latest thresholds)

5.2 Aggregation

5.2.1 We must never deliberately split the value of contracts.

5.2.2 Wherever possible, the Council should make its purchases in the form of a single large contract in preference to a series of smaller contracts this to obtain maximum benefit in terms of prices/costs obtained

5.2.3 We must calculate the value of the separate contracts of the same type over a short period together for the purpose of determining if the value of the contract falls within the threshold. (See also 3.3 and 3.4 above).

5.3 Procedures governed by the EU Directives

5.3.1 If your contract has a value over this threshold you must consider whether you must procure under the Public Contracts Regulations 2006.

5.3.2 The Regulations contain provisions relating to submitting of notices and other documents electronically.

5.3.3 Your contract must be tendered under the Open, Restricted, Competitive Dialogue (for particularly complex contracts) or, in exceptional circumstances, the Negotiated procedure.

5.3.4 The EU Directives and UK Regulations are very long and only the principal requirements can be given here. If in doubt, refer to the Guidelines and advice should be sought from the Procurement Manager

5.3.5 For each contract, except where indicated below, a Contract Notice must be published in the Supplement to the Official Journal of the European Union (OJEU). Advertisements published additional to this:

- Must not appear in any form before a Contract Notice is transmitted to OJEU; and
- Must not contain any information additional to that contained in the Contract Notice in OJEU.

5.3.6 Minimum timescales relating to tender procedures governed by the EU Directives are shown in the Guidance and these must always be followed.

5.3.7 Where a Prior Information Notice (PIN) announcing a forthcoming Contract Notice has been sent to OJEU between 52 and 365 days before the Contract Notice is sent, reduced timescales may apply.

5.4 Use of the Competitive Dialogue Procedure governed by EU Directives

5.4.1 Advice must be sought from the Procurement Manager at the earliest opportunity before commencing a tender process governed by EU Directives particularly when using either the Competitive Dialogue or the Negotiated Procedure.

5.4.2 Under EU Directives, the Competitive Dialogue Procedure may be used for contracts valued at or over EU thresholds in certain circumstances where:

- I. we wish to award a particularly complex contract and think that the use of the open or restricted procedures will not allow the award of that contract;
or

- II. the contract is for a service and the precise nature of the service required cannot be clearly specified or accurately priced (e.g. some PFI or PPP contracts, bespoke software applications, insurance services, intellectual and artistic services).

5.4.3 The Negotiated Procedure should not now be used (except in very specific circumstances) for the procurement of particularly complex projects.

5.4.4 If in doubt, you must contact the Procurement Manager/Head of Legal, Equalities and Democratic Services

5.5 Contract Award Notice

5.5.1 For all contracts tendered under EU Directives, 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, each tenderer must be notified in writing on the outcome of the tender process. This notification must include:

- √ details of the contract award criteria;
- √ where practicable the score the tenderer obtained against those award criteria;
- √ where practicable the score the winning tenderer obtained; and
- √ the name of the winning tenderer.

5.5.2 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 de-brief on the tender process. Even if a tenderer asks for a de-brief outside of the standstill period we are still obliged to provide this.

5.5.3 In this instance, advice must be sought from the Procurement Manager at the earliest opportunity. All contracts awarded under EU Directives must be announced by means of a Contract Award Notice in OJEU transmitted no later than 48 calendar days after the date of award.

6. Integrating Equality and Diversity into Procurement

6.1 Why include equality and diversity in procurement?

6.1.1 Bromsgrove District Council wants to make Bromsgrove a cohesive, multi-cultural society in which all differences are valued and celebrated. To achieve this we have committed ourselves to the principles of fairness and valuing diversity for everyone who lives, works, studies, invests in or visits Bromsgrove. We operate an Inclusive Equality Scheme which sets out the details of this commitment. This includes:

- Our principles, values and standards
- Our strategic aims and objectives
- Our structures

- Our goals in employment

6.1.2 The public sector, in general, and local government in particular are increasingly involved in joint working with partner organisations from the public, private and voluntary sectors.

6.1.3 The Council's responsibilities for leadership within the district and for the provision of quality services which are responsive to individual and community needs underline the importance of working with partner organisations and contractors to promote the values for which we stand and bring about our vision of valuing diversity.

6.1.4 In particular we commit ourselves to:

- Working with and influencing our partner organisations to make Bromsgrove a place where diversity is valued and celebrated.
- Requiring all contractors to comply with the Council's Standing Orders / Contract Procedure Rules / Constitution relating to contracts.
- Assisting partner organisations and contractors to become organisations which understand and oppose all forms of institutional discrimination.

6.2 The Role of Procurement in Promoting Equality

6.2.1 The Council provides a wide range of services to the community and businesses in the district. In some cases these are provided directly by the Council, in other cases on our behalf by contractors and partners.

6.2.2 Each year the Council can enter into contracts worth many thousands of pounds for buying goods, works and services on behalf of the Bromsgrove community. Therefore, the services provided to the community should be geared towards their diverse needs and requirements.

6.2.3 Spending by the Council sustains and maintains a significant number of jobs within the district. The Council has a statutory duty to ensure that public money is spent in a way that ensures value for money and does not lead to unfair discrimination and social exclusion.

6.2.4 The promotion of equality in procurement will help the Council to:

- Improve the overall value for money for the Council in terms of the goods, works and services they purchase
- Improve the quality, responsiveness and appropriateness of our services.
- Ensure that public money is not spent on practices which lead to unfair discrimination to sections of the district.
- Create a diverse and integrated workforce.
- Deliver more responsive and flexible services in combating social exclusion and building stronger and cohesive communities.

- Encourage other organisations to promote and practice the Council's policies on equality.

7. Tender Procedures

7.1 Receiving and opening tenders

7.1.1 Every response to an invitation to tender for a transaction valued over £50,000 should be delivered:

- √ no later than the time specified for submission of tenders in the invitation to tender (and addressed to the person at the place specified in the invitation to tender (or e-mail address));
- √ on CD ROM, or via email (depending on your procurement approach) (or provided in hard copy as a last resort); and
- √ with no labelling or other markings on the CD ROM or packet that identifies the tenderer.

7.1.2 The Head of Service must keep the tenders secure until the time specified for their opening. Two officers must open all tenders at the same time, one of whom must work in another department, section or unit. All pages from each tender detailing prices or costs must be initialled and dated by the officers opening the tenders or bids.

The opened tenders must be recorded on the list of tenders invited.

email: Tenders/Bids must be sent to e-tenders@bromsgrove.gov.uk which is a secure facility

email: Quotations must be sent to e-quotations@bromsgrove.gov.uk which is also a secure facility

Both can only be opened at the appropriate time by nominated Officers

7.2 Evaluating tenders

7.2.1 Where written quotations are invited for contracts valued over then the bidder submitting the lowest price compliant bid must be awarded any resulting contract, unless alternative pre-determined criteria are detailed in the document used to invite bids awarded on that basis.

7.2.2 For contracts valued over £50,000 and for all contracts governed by EU Directives, a more complex Best Value tender evaluation procedure based on the identification of the Most Economically Advantageous Tender ("MEAT") should be used. There are some situations, however, where MEAT will not be an appropriate method of evaluation - usually where the only discerning factor between products and/or solutions will be that of price (e.g. where you are buying stationery or other standard items). It is unlikely that providers for Services or Works could be selected on price alone as these will often require more subjective evaluation techniques. While criteria for evaluation is at the discretion of the

Council care needs to be taken that using a lowest price method of evaluation rather than using MEAT is appropriate for the procurement.

7.2.3 This evaluation involves scoring tenders objectively by a panel of three or more officers and/or independent experts using criteria which must:

- √ be pre-determined and listed in the invitation to tender documentation in order of importance;
- √ be based on an offer made against either a performance or output based specification of the goods or services required
- √ be strictly observed at all times throughout the tender process;
- √ reflect the principles of Best Value;
- √ include price;
- √ 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;
- √ be capable of objective assessment;
- √ be weighted according to their respective importance;
- √ 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
- √ avoid discrimination or perceived discrimination on the basis of nationality, or other cause contrary to any of the Council's policies.

7.2.4 Where this evaluation methodology is used, any resulting contract must be awarded to the tenderer which submits the most economically advantageous tender, i.e. the tender that achieves the highest score in the objective assessment. This protects the Council from any 'challenges' which potentially could result in prosecution or fines.

7.3 Awarding contracts

7.3.1 IT IS A MANDATORY REQUIREMENT BEFORE ANY PROPOSED CONTRACT IS FINALLY SIGNED THAT IT BE PASSED TO THE LEGAL DEPARTMENT FOR CLEARANCE AND FINAL APPROVAL

7.3.2 The results of the tender evaluation process must be recorded in writing.

7.3.3 A contract must only be awarded and signed by a person authorised to do so, who must ensure that the appropriate budget holder has the funds in place to sustain the contract prior to award.

7.3.4 Budget Holders should ensure that proper records of all procurement activity are retained in electronic or hard-copy format as appropriate.

- 7.3.5 For all transactions valued at or over £50,000, brief details must be passed to the Procurement Manager

7.4 Contract Management

- 7.4.1 When preparing the specification for the contract it is important to ensure that consideration is given to what performance information will be required from the supplier. Performance information will be required in order to measure whether the supplier is meeting the service levels and targets as specified in the contract. In addition it may be necessary for the supplier to provide performance information to enable the Council to meet statutory requirements, such as the need to provide performance information to the Audit Commission each year for the National Indicator set of measures. The specification should set out not only what is required but also the frequency and timeliness on which the performance information is required. In the tender response the tenderers should be invited to demonstrate how they will ensure that performance data they supply is of adequate quality, such as information about quality processes and procedures used and quality standards achieved
- 7.4.2 It is essential to good contract management that a realistic set of Key Performance Indicators (KPI's) is built into the Specification upon which the contract is to be let. This allows Officers to hold regular meetings with contractors throughout the life of the contract to monitor and manage the supplier/contractor against the KPI's to ensure that they deliver what the Council has contracted for consistently in terms of quality, cost and benefit.

Letting the contract is just the first step.

8. Conditions of Contract

- 8.1 It is important to Contract only under the Councils relevant Conditions of Contract (unless you receive permission not to do so from the Procurement Manager or the Head of Legal, Equalities and Democratic Services Officers must use an appropriate model form of contract approved by the Procurement Manager, which is available on the Intranet under "Procurement"
- 8.2 For all contracts for services where the services are of an unusual or complex nature, the Head of Legal, Equalities and Democratic Services must be consulted to produce a suitable set of conditions of contract (with external advisors if necessary) before inviting tenders.
- 8.3 Where a contract is considered to be of a strategically important or politically sensitive nature or where the extended **limitation period** would be of value, the contract must be in writing and executed under seal.
- 8.4 The Procurement Manager will:
- I. keep a record or list of all model sets of terms & conditions of contract that gives details of when the conditions were last updated, who is responsible for their updating and contact references;

- II. review all current conditions of contract, at least every 12 months, or when new legislation is introduced;
- III. monitor and review conditions of contract issued by other organisations from time to time;
- IV. 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 and no less than twice per year;
- V. maintain the Procurement information and documentation set out in the relevant section on the intranet;
- VI. ensure that information is circulated to and appropriate access for Heads of Service/Budget Holders are updated with any new or revised local or joint framework arrangements and/or call-off contracts

9. Parent Company Guarantees

- 9.1 The person buying for the Council must consult the Procurement Manager on all tenders where the total value exceeds £100,000 to determine if a bond, parent company guarantee or other security is required.

10. Exemptions from the Rules

- 10.1 Exemptions from these Rules must be obtained utilising a completed 'Form of Waiver' (see Appendix "A") **in advance** in accordance with the following procedure.
- 10.2 An exemption **cannot** be given for an EU procurement (for more information see section 13).
- 10.3 An exemption may be agreed by the appropriate person on receipt of a completed Form of Waiver if they are satisfied that the exemption is justified.
- 10.4 A signed copy of the Form of Waiver must be sent to the Head of Finance
- 10.5 You must follow the Procurement Guidance if you do not follow the Rules. If you do not follow the Guidance and enter into a contract on behalf of the Council this could be a disciplinary offence.

See also Appendix "A" – Example of Form of Waiver to be used to obtain exemptions

11. Transfers of Contracts

- 11.1 In appropriate circumstances the Council may agree to transfer a contract.

- 11.2 This decision must be taken by the CMT for contracts of a value in excess of £100,000 (one hundred thousand) and by the relevant Head of Service for contracts of a value up to £100,000 (one hundred thousand).
- 11.3 The Procurement Manager must hold a complete record of all exemptions and transfers and submit a quarterly report to the Head of Finance.

12. Conflicts of Interest

- 12.1 Any interest which may affect the award of a contract under these Rules must be declared. Every officer entitled to buy supplies services or works must make a written declaration of interests and update it immediately when an interest changes.
- 12.2 The Procurement Manager must either certify such interests as being acceptable or take any necessary action in respect of potential conflicts of interest and the officer should take no part in the award of a contract by the Council.
- 12.3 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 Procurement Manager if you are dealing with a contract for the Council and have been offered such a gift or hospitality.

13. Variations and extensions

- 13.1 Subject to any statutory restrictions and compliance with these Rules, a Head of Service may authorise the following extensions and variations to an existing contract either:
- 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
 - a single extension of the contract by up to six months, or half the contract term (whichever is less); and
 - any other variation, and if relevant a consequent change in price, determined in accordance with the contract terms.
- 13.2 In any other circumstances the Head of Service may vary or extend a contract providing that to do so is consistent with the provisions of Financial Regulations.
- 13.3 Contracts procured under the EU Regulations must not be extended or varied without consulting the Procurement Manager.

14. Impact on other Council Policies

- 14.1 When you are buying anything for the Council you **must** consider the importance and Impact of the other policies of the Council on what you are buying (e.g. Sustainability, Environmental or Equalities & Diversities policies).
- 14.2 Details of the current Council Policies in all areas can be found on the Intranet under 'Procurement'

15. Terminology/Glossary

- 15.1 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 siting or installation of those "goods" .
- 15.2 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.

- 15.3 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 Schedule I to the Services Regulation. 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 Schedule I 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

15.4 Open Procedure

This means an advert will be placed in OJEU and the relevant press and trade journals. The tender will be open to anyone who expresses an interest.

15.5 Restricted Procedure

This means an advert will be placed in OJEU the relevant press and trade journals.

Organisations which express an interest will be required to complete a Pre-Qualification Questionnaire (PQQ). The Council will evaluate the PQQ's and produce a shortlist of suitable organisations which will then be invited to tender (ITT).

15.6 Competitive Dialogue Procedure

This is used when the Council is unable to provide a precise specification and where there is scope to negotiate about what services they can provide. The purpose of this procedure is to negotiate on the specification of the project and not on the price.

An advert is placed in the relevant trade journals, press and where appropriate in the Official Journal of the European Union (OJEU). The advert contains details of the scheme and instructions for downloading the tender documents and Pre-Qualification Questionnaire (PQQ).

Organisations will then submit a completed tender and PQQ via the website or submit a hard copy in the envelope provided.

Regardless of whether it is submitted electronically or in paper format, the tender and PQQ must be submitted before the deadline.

15.7 Electronic Procurement

This means procurement using the internet including on line e-auctions and buying portals. You can take advantage of reduced minimum time periods when you procure your contract under the EU procurement regime and submit your documents electronically.

Appendix "A" - Example of Form of Waiver

BROMSGROVE DISTRICT COUNCIL

Contract ref (if any):

PRO-FORMA REQUEST FOR THE WAIVERING OF TENDERING/QUOTATION PROCEDURES

In accordance with the Bromsgrove District Council Contracts (BDC) Procedure Rules (January 2008) tendering/quotation procedures may be waived when the work/services is of an urgent nature or other special circumstances as described in Section A and may only be actioned on the written authority of the appropriate Head of Service for Contracts valued up to £29,999 OR a Corporate Director for Contracts valued over £29,999.

SECTION A - TO BE COMPLETED BY THE PERSON MAKING THE REQUEST:

Directorate/Department:

Item of Equipment/Services:

Estimated/Actual Cost (including delivery, maintenance, training, etc. if applicable):

Please indicate in the space provided below why the goods/services available from: are the only goods/services which meet your requirements:

If it is essential that the goods/services be purchased from the Supplier nominated above rather than as the result of competitive tendering or any existing approved source please give reasons: (Refer to Guidance Notes (below) stating the reason which best describes your course of action):

Signed

.....
.....

Designation

Date.....

IN SIGNING THIS FORM I DECLARE THAT I DO NOT HAVE A PECUNIARY OR OTHER INTEREST IN THE COMPANY INVOLVED IN THE SUPPLY OF THE ITEMS/SERVICES LISTED ABOVE.

SECTION B - TO BE COMPLETED BY THE APPROVING OFFICER

REQUEST *ACCEPTABLE/UNACCEPTABLE (*delete as appropriate)

COMMENTS (if any)

.....
.....
.....
.....
.....

SIGNED DATE

IF ACCEPTABLE PLEASE FORWARD IMMEDIATELY TO REQUISITIONER FOR ACTION (with The Procurement Unit).

IF UNACCEPTABLE PLEASE RETURN TO THE ORIGINATOR OF THIS REQUEST WITH COMMENTS AS APPROPRIATE.

N.B. In Both cases a copy MUST be sent to the Corporate Procurement Unit

Guidance Notes

Formal tendering procedures may be waived by officers to whom powers have been delegated by BDC's Scheme of Delegations without reference to an Approving Officer (except in (c) to (f) below) where:

- a) the estimated expenditure or income does not, or is reasonably expected to, exceed the financial limits laid down by BDC; or
- b) where the supply is proposed under special arrangements negotiated by the OGC/OGCs in which event the said special arrangements must be complied with;

PART 16

- c) the timescale genuinely precludes competitive tendering. Failure to plan the work properly is not a justification for a single tender;
- d) specialist expertise is required and is available from only one source;
- e) the task is essential to complete a project, and arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate;
- f) there is clear benefit to be gained from maintaining continuity with an earlier project . However, in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering;

The limited application of the single tender rules should not be used to avoid competition or for administrative convenience or to award further work to a consultant originally appointed through a competitive procedure.

Where it is decided that competitive tendering is not applicable and should be waived by virtue of (c) to (f) above the fact of the waiver and the reasons should be documented and reported by the BDC Finance Director on a monthly basis.



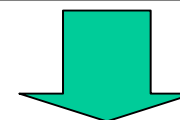
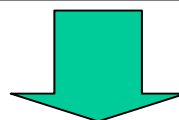
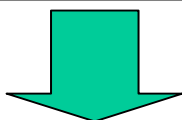
QUICK REFERENCE PROCUREMENT PROCEDURES

(Extracted from 'Contracts Procedure Rules')

VALUE - This must be the aggregated total spend over life of any contract/agreement



MINIMUM ACTION REQUIRED



Use approved Corporate Contracts or Frameworks first (if available)

Use approved Corporate Contracts or Frameworks first (if available)

Use approved Corporate Contracts or Frameworks first (if available)

OR

OR

OR

There must be evidence of competitive enquiries being undertaken with details of final selection criteria recorded and retained for one year from date of purchase (this can be in electronic form e.g. email)

You must obtain a minimum of three (3) written quotations and obtain the written approval of the Budget Holder prior to placing an official Purchase Order

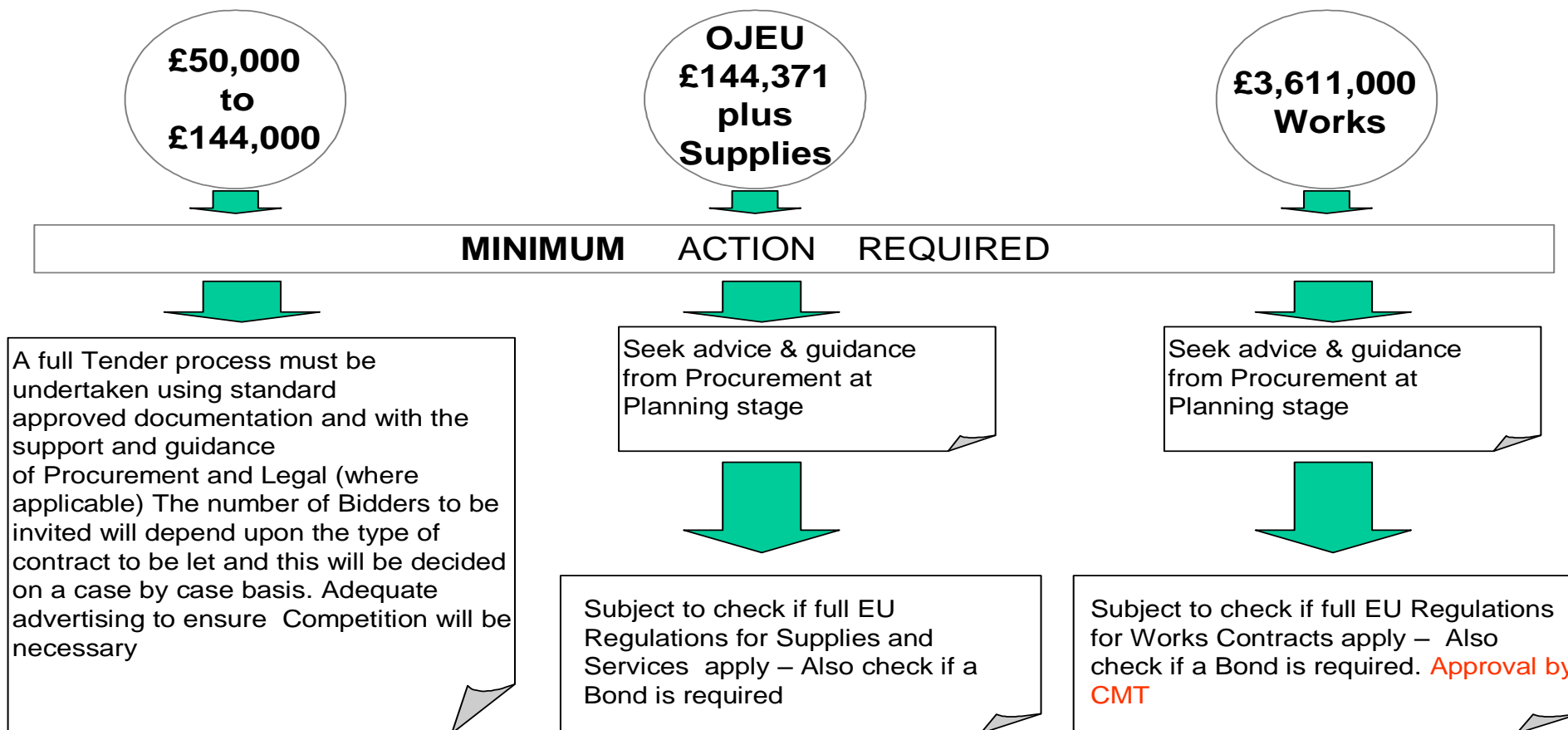
You must obtain a minimum of three (3) written quotations and obtain the written approval of the relevant Head of Service prior to placing an official Purchase Order



QUICK REFERENCE PROCUREMENT PROCEDURES

(Extracted from 'Contracts Procedure Rules')

VALUE - This must be the aggregated total spend over life of any contract/agreement



Do not take risks - consult Procurement/Legal

Appendix “C” – Current Corporate Contracts

Goods/Services Provided	Supplier Name	Contract Expires
Stationery – Core Items (Excl Copier Paper And Furniture)	Office Depot	

Appendix “D” – Current Corporate Framework Contracts

Goods/Services Provided	Supplier Name	Contract Expires
------------------------------------	----------------------	-------------------------

Appendix "E" – Equalities & Diversity

Equalities Questionnaire

Section A – Compulsory Questions

To be completed by all those suppliers/contractors invited to tender

Section A of this questionnaire must be completed satisfactorily in order for any company to be considered for any Approved List or to tender for any Council contract. The equality legislation consists of the Race Relations Act 1976, the Sex Discrimination Act 1975, the Equal Pay Act 1970, the Disability Discrimination Act 2005, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion/Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, all amendments to these Acts and all relevant regulations made under them.

[Please tick appropriate box to answer questions and if you wish to provide additional information please attach supplementary sheets, but keep this to a minimum]

1. Do you have policies in place to ensure that you as an employer and as a service provider comply with your statutory obligations under the equality legislation, which applies to Great Britain, or equivalent legislation in the countries in which you employ staff?

Yes

No

2. Accordingly, do you have policies in place to ensure that you do not discriminate directly or indirectly in breach of equality legislation which applies in Great Britain and legislation in the countries in which you employ staff:

- In relation to decisions to recruit, select, remunerate, train, transfer and promote employees?

Yes

No

- In relation to delivering services?

Yes

No

3. Do you have a written equality policy?

Yes

No

4. Does your written equality policy cover:

- Recruitment, selection, training, promotion, discipline and dismissal?

Yes

No

PART 16

6. In the last three years, have any findings of unlawful discrimination been made against you or your firm by the Employment Tribunal, the Employment Appeal Tribunal or any other court or in comparable proceedings in any other jurisdiction?

Yes

No

7. In the last three years, has any contract with you or your firm been terminated on grounds of your failure to comply with:

- Legislation prohibiting discrimination?

Yes

No

- Contract conditions relating to equality?

Yes

No

8. If the answer to question 6 or 7 is YES please provide details below and specify what steps you or your firm have taken as a result (continue on an additional sheet if required)

9. In the last three years, have you or your firm been the subject of formal investigations by the Equality and Human Rights Commission, (or its predecessors the Commission for Racial Equality, the Disability Rights Commission, the Equal Opportunities Commission) or a comparable body, on grounds of alleged unlawful discrimination?

Yes

No

10. If the answer to question 9 is YES please provide details below and specify what steps you or your firm have taken as a result (continue on an additional sheet if required)

11. If you are not currently subject to UK employment law please supply details of how you or your firm comply with equivalent legislation that is designed to eliminate discrimination and to promote equality of opportunity (continue on an additional sheet if required)

Section B – Additional Equalities Questions
To be completed when equality is considered a core requirement or if the contract value is £1M or more.

12. Are members of your staff with managerial responsibilities required to receive equalities training?

Yes

No

If you have answered YES to question 12, please provide a list of such training (continue on an additional sheet if required)

13. Do you issue your written equality policy to managers and supervisors concerned with recruitment, selection, remuneration, training and promotion?

Yes

No

14. Do you have procedures in place to protect members of your staff from unlawful discrimination by other members of staff or by members of the public?

Yes

No

If you have answered YES please list the procedures below (continue on an additional sheet if required)

For firms who sub-contract

15. Do you require sub-contractors to demonstrate evidence of their equality policies and practices?

Yes

No

If you have answered YES, please provide details of what kind of evidence sub-contractors are required to submit (continue on additional sheet if required)

If you have any other information regarding your policies on equality and practices that you wish to be considered, including information on work you have done in previous or existing contracts, and references, which cover equalities please detail below (continue on additional sheet if required)