

# Contract Procedure Rules

For the supply of Goods, Services and works

## PROCUREMENT

Being Economical

Buying Legally

Contributing to the Corporate Plan

Approved and Adopted in Part 4 (Section 28) of the Constitution

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# 1. Definitions

## 1.1. Definitions

For the purposes of the Rules:

1.1.1. Authorised Officers means the Chief Executive, Section 151 Officer (Strategic Director of Corporate Resources) and the Central Procurement Team (CPT).\*\*

**\*\* The Council's procurement function is provided under a Shared Service Arrangement through Derbyshire Shared Facilities Services based at Chesterfield NHS Foundation Trust**

**Contract means** an agreement which:

- i. may be oral, written, partly oral and partly written or implied from conduct between the Council and another person.
  - ii. gives rise to obligations which are enforceable or recognised by law (i.e. legally binding); and
  - iii. commits the Council to paying or doing something.
- 1.1.2. and, where the context requires, a reference to a contract means a contract to which the Rules apply, and a **“Call-off Contract”** means an order made/call-off contract entered into under a Framework Agreement.
- 1.1.3. **Designated Opening Officers** means officers designated to carry out the functions allocated to them in the Rules for the Receipt and Opening of Tenders (Section 16) including any third parties (such as consultants) approved by the Strategic Director (Corporate Resources).
- 1.1.4. **Director** means the Strategic Director (Corporate Resources).
- 1.1.5. **EU Tender** means a tender procedure, which needs to be carried out under European Union public procurement legislation. (***Although the UK has left the EU, the Treaty still applies in UK law until statute determines otherwise.***)
- 1.1.6. **Framework Agreement** means a contract with a supplier or suppliers which establishes the terms and conditions (in particular as to price) under which Call-off Contracts can be made during the length of the Framework Agreement. This includes government pre-negotiated contracts.
- 1.1.7. **person** means any individual, partnership, local authority or incorporated or unincorporated body.
- 1.1.8. **Section 151 Officer** means the Strategic Director (Corporate Resources) appointed under s151 of the Local Government Act 1972 and officers to whom the s151 Officer has delegated their functions in accordance with the relevant Scheme of Delegation; and
- 1.1.9. **Scheme of Delegation** has the meaning given to it under Rule 8 of the Contract Procedure Rules.



1.1.10. **Environmental management** is managing the environmental aspects and impacts of services, activities (including purchasing) and assets, to ensure compliance to SDDC Environmental Policy and ISO 14001 standard.

1.1.11. **Sustainability** is delivering environmental, economic and social gains.

## 2. Compliance with the Rules and Relevant Legislation

2.1. The Rules apply to all contracts for the provision of goods, services and works to the Council unless otherwise specified in the Rules. This means:

- i. **Purchase Orders** - All third-party expenditure should be covered by an official purchase order to enforce the '**No Purchase Order, No Pay**' policy throughout the Council.
- ii. **Payment Policy** – It is Council policy to settle all outstanding supplier liabilities by BACS, with the use of cheques phased out.
- iii. **Goods Receipt** – All goods, services and works covered by an official purchase order must be receipted before payment will be made against any invoices received by the Council – receipt must be made in accordance with the instructions specified in the Financial Procedure Rules, Appendix B1. Evidence of receipts should be kept by the recipient for audit purposes. All invoices received need to quote the official purchase order and be sent directly to Finance for invoice registration to ensure prompt processing. Invoices not quoting the purchase order will be returned to the supplier for clarification.

2.2. All contracts must comply with:

- i. European law; and
- ii. English law (including the Council's statutory duties and powers); and
- iii. the Rules and the Financial Procedure Rules; and
- iv. any relevant Council policies; and
- v. Any legal requirement stipulated by the Strategic Director (Corporate Resources).

2.3. All contracts must comply with the following principles of EU law:

- i. free movement of goods and services; and
- ii. non-discrimination; and
- iii. openness/transparency; and
- iv. equal treatment for all; and
- v. proportionality.

2.4. The intention and spirit of the Rules must be adhered to.



- 2.5. The Rules must be complied with by all officers of the Council and all other persons who are authorised to carry out procurement and contracting on behalf of the Council (such as the Council's agents for property services) ("**Agents**").
- 2.6. It must be a term of all contracts between the Council and its Agents that the Agents comply with the Rules. Furthermore, Agents may undertake to conduct the Procurement Procedures detailed herein and associated negotiation on behalf of the Council, however, such Agents are not authorised to enter into a binding Contract on behalf of the Council.

### 3. Contracts to which the Rules do not apply.

#### 3.1. The Rules do not apply to:

- 3.1.1. Contracts which are not for the provision of goods, services or works (e.g. grants or contracts relating to land). Note, therefore, that the Rules do not apply to contracts of employment, but they do apply to consultancy contracts, which are contracts for services.

- 3.2. Low value purchases which may be made from procurement cards (or petty cash for exceptional circumstances) provided that they are in accordance with any operational instructions and financial limits issued by the s151 Officer.

### 4. Exemptions from the Rules

#### 4.1. Contracts with a value of £25,000 or more

- 4.1.1. The Strategic Director (Corporate Resources) may seek an exemption from any of the Rules from:

- i. A Committee acting under delegated powers; or
- ii. The Chief Executive acting under delegated powers along with the Leader of the Council.

- 4.1.2. In order to request an exemption the Strategic Director (Corporate Resources) must prepare a report setting out:

- i. the reasons why the exemption is being requested and which Rule(s) an exemption is being requested from.
- ii. the process which is intended to be followed instead.
- iii. a legal appraisal and financial appraisal from the Strategic Director (Corporate Resources)

- 4.1.3. An exemption will only be granted where the Committee or the Chief Executive and Leader of the Council is satisfied that the exemption is justified on its own special circumstances.

- 4.1.4. Staff seeking an exemption should, in the first instance, contact the Strategic Director (Corporate Resources).



## 5. Contracts to which Rules on Tendering (Rules 12-18) do not apply - General.

5.1. Competitive quotes or tenders are not required for the following:

### 5.1.1. Call-off Contracts

- i. Call-off contracts where the relevant Framework Agreement has been entered into by:
- ii. the Council in compliance with the Rules; or
- iii. another local authority, a local authority purchasing consortium or central government where the Framework Agreement has been tendered and awarded in accordance with EU public procurement legislation.

For the avoidance of doubt, Call-Off Contracts must be entered into in accordance with the terms of the Framework Agreement (e.g. selection by mini-competition) and mini-competitions under Framework Agreements must be run in accordance with CPR 2.2 and 2.3.

### 5.1.2. Emergency

- i. In cases of emergency, the Chief Executive or Strategic Director (Corporate Resources) may verbally authorise and record in writing an exemption from the Rules for goods, services or works **provided that**:
  - a. the emergency was brought about by events which were not reasonably foreseeable by, or attributable in any way to, the Council (e.g. flood); and
  - b. If the goods, services or works are not received immediately, there is a significant risk of:
    1. danger to life; or
    2. damage to property; or
    3. a major impact on the Council or its service users.
- ii. In these cases only goods, services or works necessary or appropriate to safeguard the Council's position or protect life and property can be procured before formal approval is obtained.
- iii. The Chief Executive or Strategic Director (Corporate Resources) must at the earliest be informed of the action taken in dealing with the emergency. The Strategic Director (Corporate Resources) must also submit a report to the relevant Policy Committee that details the circumstances of and justifications for granting exemptions made in accordance with this Rule.

### 5.1.3. No competitive market

- i. Proprietary or patented goods or services are proposed to be purchased which, in the opinion of the Authorised Officer, are only obtainable from one person, and it can be demonstrated that no reasonably satisfactory alternative to those proprietary or patented goods is available: or



- ii. The Authorised Officer can demonstrate that no genuine competition can be obtained in respect of the purchase of particular goods, services or works; or
- iii. The Authorised Officer is satisfied that the works or services are of such a specialist nature that they can only be carried out by one person (e.g. statutory undertakers); or
- iv. Goods are proposed to be purchased by or on behalf of the Council at a public auction; or
- v. Goods are proposed to be purchased which are of a specialist nature (such as antiquities for museums), provided that in all these cases (except for works which are primarily the responsibility of a utility or statutory undertaker as defined in s329 Highways Act 1980).
  - a. the Authorised Officer prepares a written statement explaining why the relevant circumstances apply and including why it is in the best interests of the Council for the contract not to be tendered and setting out the course of action proposed to be followed; and
  - b. the Authorised Officer receives written agreement from the s151 Officer and the Strategic Director (Corporate Resources) to pursue the course of action set out in the statement.
  - c. Authorised Officers, in conjunction with Legal Services, ensure that contract terms are appropriate considering all relevant factors (such as benefit and risk to the Council).

5.1.4. The exceptions in Rules 5.1.1 to 5.1.4 (inclusive) do not apply where the proposed course of action conflicts with EU public procurement legislation.

5.1.5. The rest of the Rules must still be complied with.

## **6. Contracts to which Rules on Tendering (Rules 12-18) do not apply - Service Specific.**

6.1. Competitive quotes or tenders are not required for the following:

6.1.1. For the engagement of Counsel by the Strategic Director (Corporate Services).

6.1.2. The exceptions in Rules 6.1.1 does not apply where the proposed course of action conflicts with EU public procurement legislation.

6.1.3. The rest of the Rules must still be complied with.

## **7. Register of Exemptions.**

7.1. The Central Procurement Team will maintain a register of exemptions granted under Rule 4 (exemptions from the Council/Chief Executive/Committee) and will provide a copy of this register to the s151 Officer at least every six months, and otherwise as and when requested to do so by the s151 Officer.



## 8. Schemes of Delegation

- 8.1. The Strategic Director (Corporate Resources) must ensure that he has a Scheme of Delegation identifying:
  - i. Authorised Officers; and
  - ii. the extent of Authorised Officers' delegated authority (including expenditure limits).
- 8.2. Authorised Officers may not, under any circumstances, act outside the delegated powers of the Strategic Director (Corporate Resources).
- 8.3. The Strategic Director (Corporate Resources) must ensure that all Authorised Officers receive the necessary training to be and remain conversant with the Rules.
- 8.4. The Monitoring Officer must supply to and agree with the s151 Officer their Schemes of Delegation before the start of each financial year, and on making any amendments.
- 8.5. The s151 Officer must keep a register of all Schemes of Delegation and supply a copy to the Monitoring Officer at the beginning of each financial year, and notify the Monitoring Officer of any subsequent amendments.

## 9. Tender Process and Record Keeping

- 9.1. The Central Procurement Team must keep and maintain records in respect of each contract (from the time the project begins until the point at which the contract ends) in order to demonstrate the achievement of Best Value, openness, probity and compliance with the Rules including EU law where OJEU specific Tenders are placed.
- 9.2. Council staff must inform the Central Procurement Team of all contracts (including Call-Off Contracts) to be tendered (at least eight weeks before the tender process starts and preferably, prior to the start of the Financial Year).
- 9.3. For Contracts with a value > £25,000 it is the Council staff obligation to provide the Central Procurement Team with sufficient notice of intention to contract. If the Central Procurement Team is notified with sufficient time, then the contract opportunity will be placed on the Council Website to meet Community Consultation obligations
- 9.4. All tenders must be led by the Central Procurement Team or an officer authorised by the Strategic Director (Corporate Resources).
- 9.5. Any Employee of the Council found to be in breach of these Contract Procedure Rules shall be subject to the Council's Disciplinary Process.

## 10. Establishing the Value of the Contract/Expenditure per Contract

- 10.1. The value of a contract (that is, the expenditure per contract) means the actual or estimated amount payable by the Council to the supplier for the goods, services or works (excluding VAT) over the length of the contract (e.g. a three-year contract with an option to extend for 2 years under which £20,000 is payable per annum has a value of £100,000).





- 10.2. Goods, services and works contracts must not be split into smaller contracts in order to avoid any of the Rules.
- 10.3. Framework Agreements must not be entered into for more than four (4) years (including options to extend) unless otherwise advised by the Strategic Director (Corporate Resources).
- 10.4. For contracts of an indefinite length the value must be established on the basis that the contract will last for a period of 48 months (Four Years). **See also Rule 21.1.**
- 10.5. **Aggregated Spend (Contract Aggregation)** – For contracts already in place for a service delivery, and where additional spend is identified which is not covered by the existing contract i.e. it exceeds the estimated value of the contract, then advice must be sought from the Strategic Director (Corporate Resources) or the Central Procurement Team.

## 11. Finance and Authorisation

- 11.1. Before entering into any process, which will or may result in the incurring any expenditure for the supply of goods, services or works be it capital or revenue, the Central Procurement Team must ensure that:
  - i. where it is a key decision, the requirements of Article 13 Section 13.2 of the Constitution have been complied with:
  - ii. adequate financial provision is included in the Council's approved revenue budget or capital programme (as appropriate) and that such expenditure continues to be available in accordance with the Financial Procedure Rules; and
  - iii. the provisions of the Financial Procedure Rules have been complied with (including, without limitation, FPR Section D, D2.15 to D2.22); and iv. Written authorisation has been obtained from the Section 151 Officer.
- 11.2. The Strategic Director (Corporate Resources) must be notified before officers enter into any process which:
  - i. will or may result in any transfers of staff under the Transfer of Undertakings (Protection of Employment) Regulations ("TUPE") and any of the staff are or were previously Council employees; or
  - ii. will or may result in any transfers of staff under TUPE who members of the Council's Pension Scheme are.
- 11.3. The Strategic Director (Corporate Resources) must be notified before officers enter into any process, which will or may result.
  - i. in a contract that confers exclusive possession of the Council's premises or
  - ii. in the acquisition by the Council of a property interest.



- 11.4. Where there is a corporate contract (i.e. contract for the benefit of the Council as a whole) for the supply of goods, services or works, no other contract may be used for the supply of those goods, services or works unless this has been authorised in advance in writing by the Strategic Director (Corporate Resources).

## 12. Pre-Qualification Requirements

- 12.1. The Central Procurement Team will undertake any required Pre-Qualification exercise.

## 13. Achieving value for money - Competitive Quotes and Tenders

- 13.1. For contracts worth less than £25,000, Unit Managers must take practicable steps to secure value for money through a combination of cost and quality by clearly defining the business requirement and seeking offers at the lowest cost commensurate with meeting that business requirement.
- 13.2. For contracts worth £25,000 or more, the Central Procurement Team must take practicable steps to secure value for money through a combination of cost, quality and competition. The Central Procurement Team must also comply with the requirements of Rule 17 relating to the drawing up of evaluation criteria.
- 13.3. For all contracts of £25,000 or above competitive quotations or tenders must be sought as set out in the following table:

### Goods, Services and Works

Estimated cumulative expenditure per contract	Competition Requirements
Up to £1,000 (Quotations)	Budget holders must ensure Value for Money by obtaining 3 quotations (if possible).
Between £1,000 and £25,000 (Quotations)	Heads of Service must ensure genuine competition by inviting sufficient numbers of persons (good practice indicates a minimum of 3 selected impartially) to submit written quotations for the goods, services or works required by the Council. Some degree of advertising may be required, preferably on the Source Derbyshire Portal.
£25,000 or above but less than the relevant EU directive threshold. (Tenders)	Heads of Services must refer the procurement exercise to the Central Procurement Team
Equal to or exceeding the financial thresholds stated in the relevant EU Directive	As above.



- 13.4. **Suppliers** – All proposed new suppliers must be approved by the Central Procurement Team prior to any contract or works.
- 13.5. **Local Suppliers** – The Council has a stated objective to wherever possible, try and support local business. To help achieve this objective, all tenders should be advertised in the Source Derbyshire portal and involve local suppliers wherever possible. For the purposes of these CPRs a local supplier is deemed to be a supplier who pays local business rates to South Derbyshire District Council or is based within a 25-mile radius of DE11 0AH.

## 14. Tender Process to Use

- 14.1. Before progressing with a tender exercise, the decision on which process to use needs to be taken by the Central Procurement Team, after liaising with the Strategic Director (Corporate Resources)

Further guidance on each of these processes, including timescales is detailed in the **Procurement Strategy and Guidance Notes**.

Where a tender process involves subsequent dialogue with tenderers and in particular those involving competitive dialogue or a negotiated procedure, this must be led by the CPT supported by the Client Department.

- 14.2. Tenders are to ensure that sustainability is factored into all bids therefore “100% price tenders” are prohibited.

## 15. Invitations to Tender

- 15.1. The Central Procurement Team shall ensure that all invitations to tender:
- i. clearly specify the goods, services or works that are required (subject to appropriate adjustment where the competitive procedure with negotiation, competitive dialogue or innovation partnership procedure is being used);
  - ii. In the case of the Negotiated Restricted Process (i.e.: under standing orders and outside OJEU), make it clear to all tenderers that there is a final stage where the top scored tenders will be invited for final interviews. At and following final interviews bidders will have the opportunity to answer the Council’s questions for clarification and to submit revised prices. This stage must be led by CPT supported by an officer of the Client Department.
  - iii. for all Tenders, list the criteria on which tenders will be evaluated (see Rule 17) showing the weighting of the various criteria. The scoring methodology will also be detailed.
  - iv. include a requirement for tenderers to declare that the tender content, price and all other figures or particulars concerning the tender have not been disclosed by the tenderer to any other party.



- v. include a requirement for tenderers to complete fully and sign all tender documents including certificates confirming that no canvassing or collusion has taken place; and
  - vi. state that the contract will be on the Council's standard terms and conditions of contract which are to be enclosed with the invitation to tender and also available on the Council's website.
- 15.2. Wherever possible, contracts must require goods, services and works to be in accordance with a specified European Standard or equivalent, or British Standard implementing a European Standard. Only if no European Standard exists should a British or other equivalent standard be stated.

## **16. Receipt of Tenders (including under Framework Agreements) and Opening of Tenders**

- 16.1. Authorised Officers must comply with the Council's Procedures for Receipt and Opening of Tenders as set out below.
- 16.2. All tenders shall be received electronically via a secure e-tendering portal owned or operated on behalf of the Council.
- 16.3. All tenders received, including mini-tenders under Framework Agreements, must remain locked in a secure vault within the e-tendering portal until the specified closing date and time for receipt of tenders has passed.
- 16.4. The secure vault shall be unlocked, and all tenders released electronically, by the CPT. Electronic copies of all tender documents submitted shall remain in the portal in a secure tamperproof area.
- 16.5. An electronic audit log shall be kept within the e-tendering portal showing all actions conducted by all parties.

## **17. Evaluation Criteria and Evaluation of Tenders**

- 17.1. In determining the relevant evaluation criteria on which tenders are to be assessed, Authorised Officers and relevant Council Staff must consider all factors relevant to their requirement, including environmental and social considerations, so far as this is lawful.
  - 17.1.1. All categories shall be 'weighted' to ensure price, quality, environment and social aspects are considered holistically and that sustainability of tender supports the achieving value for money (section 7). This can be done by understanding.
    - i. "whole life costing impact" of purchase (materials, manufacture, maintenance, quality and end of life) and
    - ii. Environmental management of its activities/services.
- 17.2. The evaluation process will clearly demonstrate that the Council is seeking to identify the Achieving best value tender (see Rule 13).



- 17.3. The CPT will ensure that all tenders and mini competitions are evaluated by a panel including the Council's Client Department, technical and financial officers (if appropriate) and appointed external consultants, in accordance with the evaluation criteria specified in the invitation to tender.
- 17.4. The arithmetic in compliant tenders, including mini tenders under Framework Agreements, must be checked. If arithmetical or clerical errors are found they should be notified to the tenderer, which should be requested to confirm the correct figures/wording or withdraw its tender.
- 17.5. Authorised Officers must compare submitted tender prices with any project appraisal or pre-tender estimates. All differentials must be considered. For tender prices of £25,000 or more where the differential is more than 20% above or below the project appraisal or pre-tender estimate, the reason must be determined, and this must be reported to the Strategic Director (Corporate Resources).
- 17.6. In cases as set out in Rule 17.5 for goods and services, a tender must not be accepted unless this has been authorised by the Strategic Director (Corporate Resources). For capital expenditure, authorisation of acceptance of variations must be in accordance with the FPR Section B, B2.38 of the Finance Procedure Rules.
- 17.7. Final evaluated scores will be checked by a member of the Central Procurement Team and counter checked by a member of the Finance Team and/or the Client Department to ensure accuracy.

#### **Equality, Inclusion and Diversity**

- 17.8. In making decisions to award, the Council must consciously consider the need to: eliminate discrimination, advance equality of opportunity, and foster good relations. This should be proportionate to the service or goods being procured.
- 17.9. It is an on-going obligation and therefore should be considered during pre-procurement, the procurement itself and through contract management. Where relevant, Contractors should be required (by way of inclusion of specific contract terms) to take steps to assist the Council to comply with its duty under the Equality Act 2010.
- 17.10. All contractors will be expected to comply with national equality legislation to deliver services fairly and without unlawful discrimination. The Council's Procurement Team can provide advice on the necessary questions that are required to be raised with all contractors within the tender documents and how the responses should be evaluated.



## 18. Award of Contracts

- 18.1. Contracts may only be awarded by the Council if there has been full compliance with the Rules and the Financial Procedure Rules.
- 18.2. Tenders may be evaluated and recommended for acceptance by the following officers:

Cumulative value of contract	Acceptance by
Tender not exceeding £25,000	Head of Service
Above £25,000	Strategic Director

- 18.3. No tender can be accepted, or contract awarded unless this is on the basis of the evaluation criteria sent out with the invitation to tender.
- 18.4. Successful and unsuccessful tenderers (and, for EU Tenders, and those persons who expressed an interest in the contract) must be notified of the award of the contract for which they have submitted a tender. This notification letter must be in a form approved by the Central Procurement Team.
- 18.5. Where there has been an EU Tender, and in such other circumstances as the Strategic Director (Corporate Resources) may advise, the award of the contract must be subject to the legally required standstill period to enable unsuccessful bidders to challenge the award prior to completion of the contract (see Rule 20.1). Where there is a court challenge prior to completion of the contract then the contract must not be completed without the authorisation of the Strategic Director (Corporate Resources).
- 18.6. Where a key decision was required to authorise the entering into of the procurement process under Rule 11, the contract must not be awarded unless that decision has been complied with (for example, a new decision may be required prior to award or if any of the risk factors have changed).
- 18.7. Where a key decision was not required to authorise the entering into of the procurement process under Rule 11 but due to the price of the winning bid it has become a key decision, the requirements of Article 13 Section 13.2 of the Constitution must be complied with before the contract is awarded.

## 19. Signing and Sealing of Contracts

### 19.1. Contracts, which are not call-off Contracts

- 19.1.1. Where there has been an EU Tender, and in such other circumstances as the Strategic Director (Corporate Resources) may advise, the contract must not be entered into with the successful tenderer unless and until the mandatory standstill period has elapsed without a challenge from an unsuccessful tenderer (see also 18.5).
- 19.1.2. Contracts shall be drawn up with support of the legal team.



- 19.1.3. Heads of Service with delegated powers must sign contracts up to £25,000 in value (see Rule 8).
- 19.1.4. Save as set out in Rule 20.1.1, two authorised officers of the Council must sign all contracts which are worth £25,000 or more in value. For the purposes of contract signing authorised officers are Chief Executive and Strategic Directors. For the avoidance of doubt, no elected or co-opted Member of the Council may sign any contract for or on behalf of the Council
- 19.1.5. *Any contract requiring the additional limitation of 12 years rather than the 6 years for court proceedings in the event of default must be sealed as a deed by the Strategic Director (Corporate Resources). This is particularly relevant to construction contracts in the case of latent defects.*

## 19.2. Call-off Contracts

- 19.2.1. *Council Framework Agreement with no new terms:* Where a Call-off Contract is entered into under a Framework Agreement which has been set up by the Council and no new terms are being introduced (e.g. under a mini-competition), the Call-Off Contract does not have to be signed or sealed (unless required in accordance with the terms of the Framework Agreement) BUT the Call-off Contract must be authorised as set out in Rule 11 and under the Financial Scheme of Delegation and approved by the Central Procurement Team.
- 19.2.2. *Council Framework Agreement with new terms:* Where a Call-Off Contract is entered into under a Framework Agreement which has been set up by the Council and new terms have been introduced (e.g. following a mini-competition), the Call-Off Contract must be signed or sealed as set out in 19.1.1 to 19.1.3 (inclusive) unless otherwise agreed by the Strategic Director (Corporate Resources).
- 19.2.3. *Third Party Framework Agreements:* Where a Call-off Contract is entered into under a Framework Agreement which has been set up by a third party, the Call-Off Contract must be signed or sealed as set out in 18.1.2 to 18.1.3 (inclusive) unless otherwise agreed by the Strategic Director (Corporate Resources)

## 20. Commencement of Contracts

- 20.1. No supply of goods, services or works must commence until all contract documentation is duly completed (see Rule 19), except:
  - 20.1.1. In cases of emergency falling under Rule 5.3, in which case the contract must be completed at the earliest opportunity.
  - 20.1.2. Where otherwise approved by the Strategic Director (Corporate Resources)

## 21. Terms and Conditions of Contracts

- 21.1. Terms and conditions shall be drawn up with support of the legal team.
- 21.2. Terms and conditions for all contracts for goods, services and works with a value of £25,000 or more (and preferably all other contracts, particularly consultancy contracts)



must be in accordance with the Council's standard terms and conditions prepared or approved by the Strategic Director (Corporate Resources), unless otherwise agreed by the Strategic Director (Corporate Resources).

- 21.3. All contracts with a value of £25,000 or more must include a clause empowering the Council to terminate the contract for corruption and to recover from the supplier the amount of any loss resulting from such termination in a form approved by the Strategic Director (Corporate Resources).

#### **21.4. Key Performance Indicators**

- 21.4.1. ensure that relevant corporate and service level plan objectives are included in the Terms and Conditions and applicable reportable timeframes for data is in place to be sent back to the contract manager at the council.

## **22. Variations, Extensions and Renewals of Contracts**

- 22.1. Where an Authorised Officer wishes to exercise an option in a contract to extend that contract, this must be referred to the Central Procurement Team and Legal Services for advice.
- 22.2. Where an Authorised Officer wishes to re-negotiate the price payable under a contract, vary the contract materially or extend/renew a contract where there is no option to extend it in the contract, this must be referred to Legal Services and the Central Procurement Team before negotiations are entered into as there may be a new contract in these circumstances to which the Rules must be applied.
- 22.3. In determining whether to vary, extend or renew a contract, a full value for money assessment should be undertaken to determine the best option at that particular time. An option to extend a contract should not be automatically invoked without some justification. Consultation should be undertaken as appropriate with Finance and Procurement.

## **23. Contract Management**

### **23.1. Environmental and Health and Safety Management**

23.1.1. Shall have in place (as per tender and/or quotation).

- i. Health and Safety Management System.
- ii. Environmental Management System or confirmation to adhere to the Council's STEMS system (ISO 14001)
- iii. Quality Management system (as required)

A Contract maybe audited to ensure compliance to these systems to ensure compliance for undertaking

- 23.1.2. The contractor is responsible for supervising their own staff and for ensuring that they work safely. The Councils role is to ensure that they fulfil these obligations and that the contractor appointed is competent to undertake the task. Copies of the below should be available to request.





- i. Copies of competencies of all staff shall be retained by the contractor but maybe called on
- ii. RAMS (Risk Assessments and Method Statements) including COSHH assessments

23.1.3. Before commencing works on behalf of the Council, a Contractor induction shall be completed as per STEMS-10

### **23.2. Contract Delivery**

The client or commissioning Department is responsible for the proper monitoring of contracts and third parties in accordance with the terms and conditions and any performance targets. Besides the qualitative aspects, this should also include financial performance to ensure that budgets and contractual amounts are not exceeded. This should be undertaken within the Council's Budget Monitoring Framework.

### **23.3. Contract Meetings**

Contractual performance should be reviewed on a regular basis and although this could vary depending on the nature and operation of each Contract, this should be undertaken on at least an annual basis.

## **24. Non-compliance with the rules**

- 24.1. Any non-compliance with any of the Rules must be notified to the Strategic Director (Corporate Resources) (as s151 Officer)
- 24.2. If non-compliance has given rise to or is likely to give rise to illegality or maladministration, the Strategic Director (Corporate Resources) (as s151 Officer) will notify the Monitoring Officer or in the event of a conflict of interest, the Chief Executive.
- 24.3. If the Rules are not complied with, this will not invalidate any contract entered into by or on behalf of the Council, except where European or English law provides to the contrary.

## **25. Seeking advise**

Officers requiring advice on procurement practice and EU requirements should contact the Central Procurement Team at: [procurement@south-derbys.gov.uk](mailto:procurement@south-derbys.gov.uk)

Officers requiring contracts, terms and conditions or legal advice should contact Legal Services.



## 26. Associated Documentation

Description of Documentation	
Corporate Plan	2020-24
Procurement Strategy and Framework	2020-2024
SDDC – General Terms and Conditions for contact	Version: June 2019
Environment Management System	STEMS-01
Procedure forms	<ul style="list-style-type: none"> <li>• Pre-procurement analysis for contracts</li> <li>• Procurement checklist for tender exercises</li> <li>• Tender report</li> <li>• New supplier form</li> <li>• Permission to setup new supplier form</li> <li>• Quotation waiver form</li> <li>• Exemption from the Tendering Rules</li> </ul>
Guidance	<ul style="list-style-type: none"> <li>• Selling to the council – a practical guide</li> <li>• Purchase order conditions</li> </ul>

## 27. Version Control

Version	Changes	Date
1	Full review of procedures	May 2017
2	Update on procedures following Senior Management Restructure	June 2018
3	Update to include environmental aims following ISO 14001 audit and supporting update to Environmental Policy 2021. In addition, version reflects the new Equality, Inclusion and Diversity Strategy 2020 to 2024.	April 2021

