

# Procurement regulations

Approved by the Audit Committee on 24 March 2011



## **Summary of the main controls and regulations shown in the procurement regulations**

- Check with the Head of Procurement if there is any doubt about whether these Regulations apply to a specific contract, or check with a procurement advisor if you are not sure about any part of the regulations (section 1 and various).
- Ignoring the role of procurement advisors, individual managers (various) will be responsible for governing the procurement process.
- When buying anything for us, you have to consider the importance and effect of our other policies, for example, the Environmental Policy, relevant Health and Safety Policy and so on (section B and section C).
- If you are involved in the procurement process or manage any contracts, you must declare any possible conflict of interest to your manager and the Director of Law and Democracy. The golden rule is, if in doubt; declare it (section C).
- The contract value does not just mean its yearly value but all payments over the length of the contract (including any extensions) – special rules apply if there is no set length for the contract (section C and section H).
- You must keep all tender-related documents in line with our policies on keeping documents and to satisfy audit requirements (section C and section N).
- Staff involved in the procurement process must act in line with the Scheme of Delegation for Procurement (section C and annex 2).
- Before beginning the procurement process, you must produce a contract strategy where we buy goods, work or services (section C, section D and section E).
- You must follow the correct tendering process – this will depend on the value of the contract and the extent to which a framework agreement is already in place (section F). See the table over the page.
- A Procurement Advisor will provide advice on the nature and scope of those framework agreements already in place (various).

- For all contracts over £100,000, you must consult a Procurement Advisor before buying what is needed (section B and section F).
- Electronic procurement (including e-tendering) is a developing area. You must consult a Procurement Advisor before using this facility (section F).
- When you evaluate a tender using MEAT (most economically advantageous tender), you must use the tender evaluation methodology referred to within section M.
- You cannot accept a tender or appoint a provider unless you have carried out a financial check in line with the supplier financial appraisal strategy (section N and annex 3).
- We can only change our requirements for insurance if the Director of Finance and Resources agrees (section R).
- Special rules apply for ICT items (section C and section S).
- In certain situations, we allow an exception to these regulations as long as you fill in a waiver form and this is authorised (section V and annex 1).

Options available for the tendering process

|                                 |   |   |
|---------------------------------|---|---|
| Low-value transactions          | Up to £15,000   | <p>A framework agreement if there is one or a pre-qualified list of providers, unless the Director of Law and Democracy decides otherwise</p> <p>Two written tenders or quotations</p> <p><b>Note</b></p> <p>For transactions valued below £500, you can use a purchasing card.</p> |
| Intermediate-value transactions | Over £15,000 and up to £100,000                                     | <p>A framework agreement if there is one or a pre-qualified list of providers, unless the Director of Law and Democracy decides otherwise</p> <p>Three written tenders or quotations</p>  |
| High-value transactions         | Over £100,000 and up to EU transactions limit                       | <p>A framework agreement if there is one or a pre-qualified list of providers, unless the Director of Law and Democracy decides otherwise</p> <p>Public advert</p>  |
| EU transactions                 | <p>Goods and Services over £156,442</p> <p>Work over £3,927,260</p> | <p>Special rules apply – speak to a procurement advisor</p>   |

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## **A Introduction**

- A1 These regulations are part of our constitution and are our procedural regulations for buying items for us (the regulations). They do not apply to buying items or services from within the council.
- A2 We explain the difference between goods, work and services in the glossary of terms at the end of the regulations.
- A3 The regulations apply to any contract that results in us making a payment and some types of contract where a service is being provided for us which results in some income being generated for us.
- A4 The regulations also apply if we are acting as the lead organisation in partnership or other joint arrangement or if we appoint a subcontractor in connection with any contract.
- A5 The regulations do not cover grants which we may receive or make (unless the grant is part of a contract for services).
- A6 The regulations do not apply to:
- contracts of employment;
  - contracts relating to interest in land (also known as property);
  - contracts entered into by schools using delegated budgets;
  - contracts placed by the Director of Finance and Resources for treasury management;
  - contracts placed by the Director of Finance and Resources investing money or assets of the Staffordshire County Pension Fund; and
  - contracts relating to selling or otherwise disposing of our assets.
- A7 If you are in any doubt about whether the regulations apply, you must always check with the Head of Procurement.
- A8 Our 'best value duty' is very important. It means that we must always consider how each procurement meets our duty to secure continuous improvement in what we do after taking account of economy, efficiency, effectiveness and outcomes. As a result, we need to question whether we should be buying anything at all and, if we do, whether we can buy it best ourselves or jointly, or if we should rely on someone else to get

better value.

- A9 Government and EU public procurement regulations require that we must allow, and be seen to be allowing, freedom of opportunity to trade and to be open and clear about how we do things.
- A10 If we fail in this duty, a provider could make a complaint against us which could result in them claiming damages and even suspension of the contract.
- A11 The most important principles are being clear, open and providing fair competition. Whenever we are buying goods and services for the council, we must always act to promote competition and to achieve value for money.
- A12 The regulations have three main aims. These are to:
- keep to the obligations that govern spending public money, such as the EU Public Procurement Regulations;
  - get 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
  - protect people who follow the regulations.
- A13 The regulations:
- are written in plain English; and
  - help decisions to be made by the right people at the right level in the council.
- A14 In these regulations we have marked certain sections in bold and added a \* symbol. These sections are compulsory and must always be followed whatever you are buying for us. If there is no \*, you should treat the regulations as best practice and follow them wherever appropriate.
- A15 These regulations may be suspended if the relevant Senior Leadership Team Member decides if:
- a contract or subcontract is being let on behalf of a public agency for example the Department of Transport, and any condition under these regulations does not match the requirements of that agency;
  - you are buying something jointly with one or more public organisations and you are following their procurement processes;
  - a contract or subcontract which is governed by nationally negotiated conditions of contract from one or more professional institutions, for



example ICE building contracts and any condition of these regulations, does not match a condition in those conditions of contract; and

- we are working in line with procurement regulations entering into a framework agreement negotiated by another public organisation

A16 We will review these regulations at least once every two years after they are considered by the Audit Committee. In the meantime, the Director of Law and Democracy and Director of Finance and Resources, by consulting the Chairman of the Audit Committee, will make any required minor changes to them.

A17 These regulations apply to all contracts for goods, or for work, services or utilities for us or which we provide unless paragraphs 1f and 1o apply or you have a valid waiver under regulation 22 (section headed 'Exceptions from the regulations').

## **B Context**

B1 The European Union sets down (through a treaty) what obligations are placed on us when we are buying. The main principle is to make sure that everyone in the marketplace who could provide the goods, work or services to us has the opportunity to do so.

B2 We all now need to think about the way we arrange this, for example, e-auctions, e-tendering, or setting up a framework or placing a supply contract. More and more, councils are working collaboratively through joint procurements (in other words, buying the goods and services you need with another department or another council or councils and sometimes other public organisations).

B3 When you are buying anything for us, you **must** consider the importance and effect of our other policies on what you are buying. For example, this could include the Strategic Plan, the Community Engagement Framework, the Staffordshire Compact and Third Sector Commissioning Standards, the Corporate Equality Plan and the Environmental Policy.

B4 If you are buying larger or expensive goods, work or services, remember that the regulations for higher value orders and contracts are stricter than for those of lower value. This is so that the benefits of a more thorough, complicated process are not outweighed by the price compared to the value of the goods, work or services in question.

B5 At the highest end of the value scale, we **must** follow full EU public procurement directives, which say that we must keep to certain other procedures. In these cases, you **must** consult a Procurement Advisor before you start buying what you need.

## C Before we start

### Making sure we keep to law and policies

C1 When making or proposing a contract on our behalf, the senior leadership membership team will:

- keep to all relevant legal requirements including EU procurement regulations, relevant health and safety, environmental and equalities and discrimination law;
- keep to these regulations;
- keep to our financial regulations; and
- keep to the principles of the Staffordshire Compact.

### Honesty and conflicts of interest

C2 Every officer who takes any decision or has any influence about a contract must keep to our integrity policy statement and local code of conduct for employees. They must also complete and sign the Declaration of Interest and Confidentiality document, which can be found here;  
<http://www.staffordshire.gov.uk/business/procurement/procurerules>

C3 Every officer who has a financial interest in a contract must contact the Director of Law and Democracy who will make a record in a book we will keep for the purpose, under Section 117 of the Local Government Act 1972.

C4 You should not accept any gifts or hospitality from anyone tendering for a contract we are leading on or from any current supplier. If you do, this may be a disciplinary offence. You **must** tell the Director of Law and Democracy if you are dealing with a contract for the council and have been offered such a gift or hospitality. You can get more advice and guidance on the intranet under Gifts and hospitality.

### The competitive process

C5 EU directives, UK law and Government policy says that we **must** always make sure that we are offering the opportunity to provide goods, work or services to the whole market to make sure there is fair competition.

C6 If your contract is a very high value (in other words, with a value of more than £100,000), you **must** follow the section on high-value procurements.

- C7 The value of a contract means the estimated total value over the length of time it will apply, including any extension options (**not the yearly value**), before VAT.
- If the contract is for buying a single item, which is not related to buying other items, the contract is worth the price, or estimated price, referred to in that contract.
  - If the contract is for buying a related group of items, the contract is worth the total price, or estimated total price, of the group.

C8 If there is no set length of time for the contract, this is the estimated value of the contract over a period of four years. You should not split contracts to avoid the values, either by item or length. Special arrangements will apply for ICT contracts.

### **Who can buy goods and services?**

- C9 Annex 2 of these regulations gives details of the Scheme of Delegation for Procurement which defines who can buy goods and services for us.
- C10 Senior leadership team members should make sure that any buying is carried out by their procurement professionals or by an authorised person who can prove they have the skills and knowledge appropriate for buying the goods, work and services. These people should already have authority under our scheme of delegation for procurement. If not, they need to be granted authority from the relevant person or organisation.
- C11 Each senior leadership team member **must** make sure that we do not go over the limits in the scheme of delegation.
- C12 The Director of Finance and Resources will review the scheme when necessary and this will be considered by the Corporate Governance Working Group.
- C13 Before starting a procurement process, you need to make sure that you have carefully identified the need and fully assessed the options for meeting it. Before you start, you **must** consider the following.
- Is there a clear business need, supported by appropriate evidence and a budget in place?
  - What is important to the council in this procurement? Do you just need the goods, work or services? Or are there other things you want to bring about (for example, improved environmental performance, new jobs) or added social value. In certain cases the

procurement process can help achieve this wider social value by meeting a particular social, environmental or economic aim. It allows commissioners to achieve broader aims but you **must** consult a Procurement Advisor.

- Can you buy what you need with another directorate or another council? If you think you could save us money or achieve other advantages if you bought what you need with someone else, consider whether there is an existing framework arrangement, in-house provider or contract you can use. This framework or contract could be one we have already set up or one set up by another council or joint-purchasing organisation or run centrally by the Government (such as Buying Solutions).
- Is there some kind of recognised purchasing group in place (often referred to as a buying consortium) where members can use the purchasing arrangements to buy goods or services? If there is a group in place, you do not have to keep to these regulations. However, you can only buy the goods or services that are covered by the group arrangements. If the goods or services are outside the scope of the group arrangements, you must use some other method of procurement in line with these regulations. A procurement advisor can give you more advice on this.

C14 If after considering other buying solutions you are going to use a joint procurement with another council, this should be done using conditions at least as strict as these.

C15 If you decide that you or your partners are likely to need to buy the goods or services again in the future, it may be that the best way to buy them is by setting up a framework agreement. A framework agreement allows a number of providers to sell you the goods, work or services you need when you need them. There are many types of contracts which will be suited to a framework agreement and it is important that you agree this with a procurement advisor before you start to make sure that the type of contract being used is most suitable.

### **Employment issues and TUPE (Transfer of Undertaking Protection of Employment Regulations)**

C16 Entering into new contractual arrangements or changing existing contractual arrangements can give rise to TUPE implications. It is not always obvious that there are TUPE implications (for example, when a contract with another supplier comes to an end and is to be put out to tender again). So, **if in any doubt**, you **must get the** advice of a Procurement Advisor or an HR specialist to make sure that any relevant TUPE arrangements are in place.

- C17 Where it has been decided that goods, work or services should be bought from an external source, you **must** consider the effects this may have on the existing in-house team and the possibility of staff transferring to the new provider under TUPE.
- C18 These contracts **must** contain conditions to make sure appropriate workforce (and other) information will be made available in enough time when that contract is due to end to make sure that we can fulfil TUPE obligations.
- C19 TUPE situations will almost always give rise to pensions issues. You can get advice on this from the Pensions Section. You will need an actuarial statement on pension information for any proposed TUPE transfers. You can get this from the Pensions Section. It is the responsibility of the person managing the tender process to get this. Sometimes, we may need a pension admissions agreement.
- C20 You can get more information on TUPE from [www.acas.org.uk](http://www.acas.org.uk).

### **The main contracts**

- C21 For major, specialist, higher value or important contracts, for example those which involve transferring council employees to a contractor under a PFI (private finance initiative) or outsourcing arrangement, a senior leadership team member must get further relevant approval if this is appropriate. This will concern whether a contract is to be awarded and to whom.
- C22 Senior leadership team members **must** consider if members should be involved in decisions during the tender process, for example by deciding on the conditions for awarding the contract. This will be more relevant for high-value procurements including PFI projects.

### **Other**

- C23 A senior leadership team member will not, without approval from the Director of Finance and Resources, enter into a contract for supplying goods or services under any operating lease, hire, rental or any other credit arrangements.
- C24 Senior leadership team members must make sure all contracts and related records are kept, so they can be inspected, for a period we decide. This includes decisions to suspend these regulations and using any delegated powers.
- C25 The Director of Law and Democracy may make arrangements under these regulations about keeping records for certain types of contracts.

C26 Any interim contractor or consultant who is responsible to us for preparing or supervising a contract on our behalf must do the following. They must:

- keep to these regulations as though they were a senior leadership team member, though the procedure may be modified so that inviting, opening and accepting tenders can be approved beforehand by the senior leadership team member concerned;
- if the Director of Finance and Resources or any officer we have authorised asks, produce all the records they keep in relation to the contract; and
- at the end of a contract, send all records, documents and so on relating to the contract to the senior leadership team member concerned.

## D Defining the need

D1 At the least, you **must** clearly and carefully specify the goods, work or services to be supplied, the agreed programme for delivery and the terms for payment together with all other terms and conditions. You also need to make sure that you will have the funds in the budget to pay for them.

D2 This means you **must** decide before beginning the procurement process the size, scope, and specification of the goods, work or services needed. If you are buying with someone else, you **must** decide this scope with your partners first.

D3 You **must** keep to any other council policies which could apply to what you want to buy. If in doubt, **check** with a procurement advisor.

D4 When identifying and defining the need, you should make sure you have involved a wider range of organisations relevant to the goods, work or services to be supplied. By knowing the market and encouraging a wider supply base, you have more chance to find the right providers and achieve the right services at the right price.

## E Contract strategy

E1 Once you have decided on the need, you **must** decide on a contract strategy for buying the goods, work or services.

- E2 This means taking a step back from the traditional procurement process and assessing the purchasing options particularly when purchasing services. For example, using a grant may be appropriate for a highly specialised service, if you know there is only one provider, or a very few suspected providers, or the project is of a low financial value. This is because it would not make financial sense for one specialist provider to go through a full tendering process.
- E3 You **must** consider options for delivering goods, work or services. The options for goods, works or services are:
- not buying the goods, having the work done or providing the services at all;
  - providing the goods, work or services ourselves (for example, by taking spare goods from another directorate or using their staff);
  - getting someone else to provide the ongoing goods, work or service (using the 'voluntary sector' or another local authority or public organisation); or
  - providing the goods, work or services with someone else (the private or 'third' sector or another local authority or public organisation). Be aware that for the voluntary sector, we have a special agreement.
- E4 If you are in any doubt about the above, you should get advice from a Procurement Advisor.

## **F How we buy the goods and services we need**

### **Framework agreements (including Buying Solutions, ESPO, WMS)**

- F1 You **must** use framework agreements for goods, work and services (including approved lists) **if they** exist, no matter what the value, unless the Director of Law and Democracy confirms, in writing, that the particular needs justify another procurement route.
- F2 Framework agreements (also known as call-off contracts) are arrangements with providers for providing goods, work or services on agreed terms for a set period for estimated quantities against which orders may be placed if and when needed during the contract period. They offer benefits of bulk-buying, improved services and reduced administration costs over the period of the arrangement.

- F3 A framework agreement may have the option for you to hold a mini-competition with all the capable providers on the framework when you come to buy for us. You **must** get advice from a procurement advisor on carrying out a mini-competition.
- F4 You **must** investigate whether call-off contracts or frameworks are relevant in your own case. You could get better value for us by using an existing framework agreement (and if relevant the central government agreements). You also need to check if legally you can use them.
- F5 If there isn't a framework already in place (or if one does not exist with partners which you can use), you **must** consider if it would be better value to set up a framework. This is likely if you are going to need to buy the same or similar goods and services again in the future. You can get guidance on how to set up a framework from a procurement advisor.
- F6 Countywide arrangements for routine goods and services and directorate-specific contracts, for example, maintaining premises (such as gas servicing) and terms of tenders for highways maintenance would fall into the definition of a framework.

#### **Full tender procedures (over the EU thresholds)**

- F7 If you are inviting tenders for contracts over EU procurement thresholds, you **must** decide on the procedure to follow before you advertise and it **must** be one of the following.
- Open procedure (all interested providers send us a tender in response to an advertisement).
  - Restricted procedure (expressions of interest from interested providers in response to an advertisement, with us inviting a selection of those providers to send us a tender).
  - Negotiated procedure (expressions of interest from interested providers in response to an advertisement, with us inviting a selection of those providers to negotiate). Only use this procedure if it is agreed by the Head of Procurement.
  - Competitive Dialogue procedure (where the purpose of the procurement is known but not the solution). Only use this procedure if it is agreed by the Head of Procurement.



- F8 For all transactions valued above the EU threshold, and for all transactions over £100,000 (not including VAT), you must get approval of the proposed tender process from a procurement advisor.

### **Full tender procedures for high-value transactions**

- F9 For transactions valued at over £100,000 (not including VAT) but below the EU thresholds, you must carry out a formal tender process in line with the following principles.

- Openness
- Transparency
- Visibility
- Value for money
- In the best interests of the council
- Competition

- F10 You can get more guidance on the types of procurement from a procurement advisor.

### **Intermediate-value transaction**

- F11 For transactions valued over £15,000 but at or below £100,000 (not including VAT), you **must** get three written tenders or quotations before you issue a purchase order or contract, specifying the goods, work or services. This must set out prices, our terms and conditions of contract and terms of payment, unless a framework already exists and this must show value for money. If there is a framework, you **must** follow the procedure as set out in the framework, unless the Director of Law and Democracy confirms, in writing, that the particular requirements justify using another procurement route.

- F12 If you only receive one quotation, you must try and get other quotations or an exemption from the regulations in line with Section V (section headed Exceptions from the regulations). If you get two suitable quotations, that will be enough.

## Low-value transactions

- F13 For transactions valued over £500 but below £15,000 (not including VAT), you **must** get at least two written quotations from a provider before you can issue a formal purchase order specifying the goods, work or services and setting out prices and terms of payment, unless a framework already exists and this must show value for money. If there is a framework, you **must** follow the procedure set out in that framework, unless the Director of Law and Democracy confirms, in writing, that the particular requirements justify using another procurement route.
- F14 Your purchase order **must** contain our standard terms and conditions of contract between us and the provider. A quotation and a purchase order will create a legally binding contract. We use the purchase order to formalise the terms of the contract.
- F15 For transactions valued below £500, when buying goods, work or services, you can use a purchasing card in line with the financial regulations.

## Electronic procurement and emailed quotations

- F16 You should always aim to use electronic procurement (or e-procurement) systems rather than paper systems. If you are going to us e-tendering provided by another organisation, this must be agreed by a procurement adviser. Using e-tendering may disadvantage some smaller providers. You should make it clear that paper systems can still be used, so that we attract the widest range of providers.
- F17 If you accept electronic quotations, these **must** be:
- sent to a specific email address;
  - opened at a set time;
  - opened in the presence of a duly authorised officer;
  - logged under the price given; and
  - kept on the relevant file.

## Concession contracts

- F18 You must use a concession contract if we want to hire someone to provide a service within the council area if they will be charging the public for the services being provided.

- F19 There are a number of exemptions if a public works concession contract is proposed. You can get advice on these from a procurement advisor.
- F20 If the company which plans to provide the services is going to subcontract the services, this may fall within EU procurement rules. In all cases, if the company is buying goods or services as part of the concession contract, any procurement should be carried out in line with these regulations.
- F21 You **must** get advice from a procurement advisor before carrying out any procurement relating to a concession contract.

## **G The EU directives**

### **Extra requirements for transactions valued over EU limits**

- G1 Below are the contract values above which you must follow procedures governed by the EU directives.

|   |                                   |
|---|-----------------------------------|
| For goods and services (including goods and consultancy services) | £156,442                          |
| For work  | £3,927,260<br>(from January 2010) |

These limits are changed in January every two years. You **must** check the latest limits before you go ahead.

## **H Adding contracts together**

- H1 You **must never** deliberately split down the value of contracts.
- H52 Wherever possible, we should make our purchases in the form of a single large contract rather than a series of smaller contracts. However, there will be circumstances where using lots of (smaller) contracts, is appropriate. You can get advice and guidance on this from a Procurement Advisor.
- H3 You **must** add together the value of the separate contracts of the same type over a short period so you can decide whether the value of the contract falls within the limits.

## **I Procedures governed by the EU directives**

- I1 If your contract has a value over the limit, you **must** use the UK Public Contracts Regulations 2006. The definitions of part A and part B

services are contained in Annex 5. EU treaty rules only apply to Part-A services. If they are Part B and assuming the value is above the limits, your only responsibilities are to:

- provide a detailed specification (regulation 9(7));
- use a tendering exercise that is clear, and which treats bidders equally and without any discrimination (regulation 4(3));
- publish a contract award notice after the event (regulation 31); and
- provide a statistical return report.

12 The 2006 Public Procurement Regulations contain conditions relating to providing notices and other documents electronically.

13 You **must** tender the contract under the open, restricted, competitive dialogue (for particularly complicated contracts). Or, in exceptional circumstances, you must agree a negotiated procedure with the Head of Procurement.

14 EU directives and UK Public Procurement Regulations are very detailed and we can only give details of the main ones here. If in doubt, you should get the guidelines and advice from a procurement advisor.

15 For each contract, unless we say differently below, you must publish a contract notice in the Supplement to the Official Journal of the European Union (OJEU). Advertisements you publish as well as this **must not**:

- appear in any form before we have sent a contract notice to OJEU; and
- contain any information on top of that in the contract notice in OJEU.

16 You **must** always follow the minimum timescales relating to tender procedures governed by the EU directives. The timescales given for completing and returning tenders are only the minimum, so there is flexibility to extend timescales to encourage bids from smaller providers or consortiums. If procurement falls under part-B services, or is under the EU procurement limits, there is no formal time limit. Similarly, when faced with short timescales within which to use the funds, you should still make sure the process used is fair, clear and accessible to all.

- I7 If you have sent a prior information notice (PIN) announcing a forthcoming contract notice to OJEU between 52 and 365 days before you have sent the contract notice, reduced timescales may apply.

### **Using the competitive dialogue procedure governed by EU directives**

- I8 You **must** get advice from the Head of Procurement as soon as possible before starting a tender process governed by EU directives, particularly when using either the competitive dialogue or the negotiated procedure.
- I9 Under EU directives, you can use the competitive dialogue procedure for contracts valued at or over EU limits in certain circumstances if:
- we want to award a particularly complicated contract and think that using the open or restricted procedure will not allow us to award that contract; and
  - the contract is for a service or goods and the precise nature of the service cannot be clearly given or accurately priced (for example, some PFI contracts, bespoke software applications, insurance services, intellectual and artistic services).
- I10 You should not use the negotiated procedure (except in very specific circumstances) to procure particularly complicated projects. The competitive dialogue procedure should be the normal method of procurement for complicated projects.
- I11 If in doubt, you **must** contact a procurement advisor.

### **J Tender documents**

- J1 Every invitation to tender using a Pre-Qualification Questionnaire (PQQ) should include:
- the nature and purpose and, if it applies, the proposed length of the contract;
  - an outline of the goods, work or services to be supplied or carried out;
  - a statement on our procedures for getting tenders;
  - a requirement for the applicant to provide information about their technical, commercial and financial standing if we do not already have the information;

- a closing date for receiving applications;
- the evaluation criteria (with weightings) to include in any tender process (see regulation 13);
- an outline process and timetable;
- a statement that we do not have to accept the lowest or any tender; and
- a named Procurement Advisor.

J2 Unless we change it under J1, every **invitation to tender should** include:

- the nature, purpose, start date and period of the contract;
- the detailed specification and quantities of goods, work or services to be supplied or carried out;
- the times at, or within which, and the places at which the goods, work or services are to be supplied or performed;
- a copy of the conditions of contract which the successful contractors will have to keep to;
- a requirement for the tenderer to provide information about their technical, commercial and financial standing if we do not already have the information;
- information on TUPE;
- the evaluation criteria (with weightings) for awarding the contract (see regulation 13);
- a statement that we do not have to accept the lowest or any tender;
- the closing time and date, and address for receiving tenders; and
- a named procurement advisor.

## **K Getting tenders**

K1 The senior leadership team member must send to every person who wants to give us a tender any documents which meet the requirements of regulation J. This includes a returnable tender form or other document which tells each company wanting to tender to:

- include their offer price (or prices) for the goods, work, services or utilities;
- include their signature or seal;
- return the filled-in tender form to the senior leadership team member concerned at the address given by a certain date and time;
- send the filled-in tender in an envelope with the word 'TENDER' followed by the subject the tender relates to and the closing date and time for receiving tenders;
- be told that, depending on procurement regulations relating to e-tendering arrangements, we will not consider tenders sent in only by fax or email.

## L Receiving and opening tenders and PQQs (pre-qualification questionnaires)

- L1 Every response to a PQQ or an invitation to tender should be delivered:
- no later than the time given for sending us the tender in the invitation to tender (and addressed to the person at the place shown in the invitation to tender (or e-mail address));
  - on a read-only CD-ROM clearly labelled with the tenderer's name and contract reference, or via email (depending on your procurement approach) (or provided in hard copy as a last resort); and
  - with no other labelling or markings on the packet that identifies who is providing the tender.
- L2 The senior leadership team member **must** keep the tenders secure until the time we have given for their opening. We will not open tenders before the closing date and time. Two officers **must** open all tenders at the same time. They **must** not be involved in the tender evaluation and award.
- L3 We **must** list the opened tenders on a list of tenders. Tenders must be signed and dated by the people opening them. Pages with prices in them do not need to be signed, only the total price page.

- L4 Email tenders **must** be stored in a specific site which is secure and which meets our audit requirements.
- L5 We will not open a tender if it is received late and after we have opened other tenders for that contract.
- L6 If the circumstances mean it is appropriate, the senior leadership team member may postpone, for a reasonable period, the closing time and date for receiving tenders. This applies as long as we have let everyone know, in the same way, who we have asked for tenders from and that tenders have not been opened. The powers in this paragraph cannot be enforced by an officer unless they are approved in line with the scheme of delegation.

## **M Evaluating tenders and quotations**

- M1 If we have asked for written quotations for contracts valued at or below £100,000 (not including VAT), we **must** give the contract to the bidder with the lowest price, unless other conditions are shown in the document used to invite bids. If this is the case, the contract should be awarded on that basis.
- M2 For contracts valued over £100,000 (not including VAT) and for all contracts governed by EU directives, we **must** use the 'best value' tender evaluation procedure based on identifying the most economically advantageous tender (MEAT). The tender evaluation methodology must be used, which can be found here; <http://www.staffordshire.gov.uk/business/procurement/procurerules> However, there are some situations where using MEAT will not be an appropriate method of evaluation. This is usually if the only obvious difference between products or solutions will be that of price (for example, if you are buying stationery or other standard items). It is unlikely that you could choose providers for services or work on price alone as these will often need wider evaluation techniques. When deciding on how we evaluate tenders, we need to be careful that using a lowest-price method of evaluation rather than MEAT is appropriate for the procurement.
- M3 This evaluation involves scoring tenders fairly by a panel of officers or independent experts using criteria which **must**:
- be already set out in the invitation to tender documents in order of importance;
  - be strictly kept to 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 and so on should be taken into account;
- be able to be assessed independently;
- be weighted according to importance;
- show wider social value if this has been included in the specification; and
- avoid discrimination on the basis of nationality, or other cause which goes against any of our policies.

M4 If you use this evaluation method, you must award the contract to the company which sends us the most economically advantageous tender. (In other words, the tender that achieves the highest score in the independent assessment.)

#### **N Awarding contracts and audit trails**

N1 You **must** record in writing the results of the tender-evaluation process and the decision to award a contract.

N2 You **must** only award a contract if you are authorised to do so, in line with the Scheme of Delegation for Procurement. You **must** make sure that the appropriate budget holder has the funds in place before you make the award.

N3 Senior leadership team members should make sure that proper records of all procurement activity are kept in electronic or hard-copy format as appropriate. This is in line with our policy on keeping documents.

N4 We cannot accept any tender which breaks EU procurement regulations.

N5 We cannot accept any tender unless we have carried out a financial check in line with our supplier financial appraisal strategy (Annex 3).

#### **O Standstill period (for EU tenders only)**

O1 For all contracts tendered under EU directives, we **must** have a 10-day 'standstill period' between the decision to award and the end of the contract. Once we have made the decision to award a contract, we

must write to each company that provided a tender with the outcome of the tender process. This notice **must** include:

- details of the criteria for awarding the contract;
- if possible, the score or ranking the company achieved against those criteria;
- if possible, the score or ranking the winning company achieved; and
- the name of the winning company

O2 There **must** be at least 10 calendar days between sending this notice and the end of the contract. Special rules apply if a company asks us for a debrief on the tender process. Even if a company asks for a debrief outside of the standstill period, we **must** still provide this. In this instance, you must get advice from a procurement advisor as soon as possible.

#### **P Contract award notice**

P1 We **must** announce all contracts awarded under the EU directive using a contract award notice in OJEU which must be sent no later than 48 calendar days after the date we award the contract.

#### **Q Conditions of contract**

Q1 There must be written evidence of every contract and all contracts must be in a form agreed with the Director of Law and Democracy.

Q2 All transactions **must** use an appropriate model form of contract approved by the Director of Law and Democracy (or a form decided by the senior leadership team member after consulting the Director of Law and Democracy).

Q3 For all contracts for services estimated at a value over £100,000 (not including VAT), if the model conditions of contract are not suitable, you **must** consult the Director of Law and Democracy to produce a suitable set of conditions of contract (with other advisors if necessary) before inviting tenders. PFI contracts fall within this definition.

Q4 If a contract is strategically important or politically sensitive, or if the extended limits would be valuable, for example, contracts for land or property, the contract **must** be in writing and an official seal must be placed on it.

Q5 The Director of Law and Democracy **must:**

- keep a record or list of all model sets of conditions of contract that gives details of when the conditions were last updated, who is responsible for updating them, any changes and contact references;
- keep all current model conditions of contract under review;
- monitor and review conditions of contract issued by other organisations; and

make sure that information is sent to directorates and access is given to available framework agreements and contracts, local or joint framework agreements and call-off contracts.

**R Insurance**

R1 Insurance conditions will be contained in the conditions of contract. In terms of insurance, we will normally need the successful contractor to have the following types and minimum limits of cover.

|                        | <b>Work contracts</b> | <b>Goods and services contracts</b> |
|------------------------|-----------------------|-------------------------------------|
| Public liability       | £5 million            | £5 million                          |
| Employers' liability   | £10 million           | £5 million                          |
| Professional indemnity | £5 million            | £2 million                          |

R2 The above limits relate to each claim. For public liability and employers' liability, the cover must be in place throughout the period covered by the contract. For professional indemnity, the conditions are more complicated. Not only must the cover be in place throughout the period covered by the contract but also for another six years after the end of the contract (or 12 years if the contract is under seal). For certain types of services, for example, financial advice, the amount of professional indemnity insurance cover will need to be higher to protect us in case anyone gives inappropriate advice.

R3 When providing goods and services, the above limits may not be appropriate for small and medium enterprises (SMTs) and sole suppliers. In these instances, we can reduce these limits after carrying out a risk assessment and filling in the relevant sections of the waiver form (Annex 1) after consulting the Director of Finance and Resources.

## **S Contracts for ICT hardware, software and services**

- S1 If you are planning to buy any ICT hardware, software or services, you must consult the ICT contracts manager to make sure it keeps to our ICT policy and existing software or equipment where relevant.
- S2 You **must** buy ICT hardware, software and services using ICT procurement and have the spending approved by the relevant portfolio ICT manager.
- S3 All ICT contracts **must** be signed in line with the ICT sub-scheme of delegation for procurement.

## **T Transferring contracts**

- T1 In appropriate circumstances we may agree to transfer a contract, by novation or re-assignment. You must ask for advice on how to transfer a contract from the Director of Law and Democracy, before any contract is transferred.
- T2 The Director of Law and Democracy **must** take this decision.

## **U Changing and extending contracts**

- U1 Depending on any legal restrictions and the need to keep to these regulations and the Scheme of Delegation for Procurement, a senior leadership team member may authorise the following extensions and changes to an existing contract.
- An extension for a particular period under the terms and conditions of the contract (but depending on the satisfactory performance when monitoring the contract).
  - A single extension of the contract by up to half the contract term as long as this would not place the contract over the EU limit or break any law.
  - Any other change, and if relevant a resulting change in price, decided in line with the contract terms.
- U2 Any extension to the contract period cannot be longer than the original length of the original contract.
- U3 You **cannot** extend or change contracts arranged under the EU regulations without consulting a procurement advisor.

## **V Exceptions from the regulations**

- V1 An exception to these regulations means we give permission to agree a contract without keeping to one or more of these regulations. We may grant an exception under conditions set out below. We cannot grant an exception if to do so would mean breaking any laws on public procurement or other relevant legislation.
- V2 The Director of Law and Democracy may grant an exception to these regulations for contracts over £100,000 (not including VAT). Senior officers may grant an exception to the regulations for contracts up to £100,000.
- V3 If you want an exception, you must apply in writing using the request for waiver form (Annex 1 of these regulations) and send it to the Director of Law and Democracy or the relevant senior officer. Please include the exception you want and your reasons for it.
- V4 The Head of Procurement will keep a register of all exceptions to these regulations.
- V5 We will not agree an application for an exception unless you have a good reason. We do not consider a lack of time caused by poor forward planning as a good reason and so will not allow it.

### **Exceptions which involve the request for waiver form (Annex 1 of these regulations)**

#### General contracts

- V6 We may grant an exception in the following circumstances.
- If there is an unexpected emergency involving danger to life or health or serious damage to property, if the goods, work or services are needed more urgently than would be possible if we followed the tender or quotation procedure.
  - If, for technical reasons, the goods, work or services can be bought from only one provider and this can be justified.
  - If the proposed contract is an extension or change to the scope of an existing contract with a value (including the change or extension) that is below the relevant EU limit. However, this does not apply if the existing contract provides for an extension.

- If you are buying works of art, museum artefacts, manuscripts or archive collection items.
- If there is a need to develop and influence the market by extending the range of services, as long as the contract is for a fixed term of no more than three years.
- If it is necessary so we can continue to provide a new service, which was developed using grant aid and as long as the contract is for a fixed term of no more than three years.
- If we can achieve value for money by buying used vehicles, equipment or materials.
- To develop our aims to develop the economy, without breaking public procurement rules.

#### Contracts for social care and health care

V7 We may grant an exception to the requirements to follow the tender or quotation procedure in the following circumstances.

- If the service to be provided is to be paid for using a grant paid to us under section 93 of the Local Government Act 2000 (amended in 2002) (the Supporting People Scheme) and the contract allows us to renew it with an existing provider. This applies if the renewal has been recommended by the Officers Board of the Commissioning Body set up for the purpose of that scheme because it offers value for money in line with our legal obligations. For the purpose of this exemption, renewing a contract includes changing the terms of a contract to allow for developing a service or to reduce the service. It does include providing a service but not a renewal which would allow an increase of 50% to the service provided.
- If the service to be provided is for a life-long residential, supported living or fostering placement for a named person. Throughout the contract, we will control best value using price increases based on the yearly level of inflation decided by the Place Directorate. We will also monitor best value by using the care funding calculator during the care-plan-review process or at up to intervals of four years (whichever happens first). After doing the calculation, we must formally record all future negotiations.
- If the services to be provided relate to renewing a contract for providing residential accommodation, care, education or arrangements under section 28BB of the Health Services Act 1977 (or similar for buying goods or services for a recognised group of

people who have special needs) and the relevant senior leadership team member believes the wellbeing of members of the recognised group would be affected if the goods or services were provided by someone other than the proposed provider. However, the senior leadership team member must be satisfied that the provider has the skills or experience needed to provide that service or goods and that the cost of the goods or services is reasonable and represents best value in all the circumstances.

- If the services to be provided relate to renewing a contract for providing residential accommodation, care, education, fostering or arrangements under the Health Services Act 2006 for buying services for a recognised group of individuals which is being provided by another public organisation. And:
  - 1 the wellbeing of members of the recognised group would be affected if the goods or services were provided by someone other than the proposed provider; or
  - 2 the services can more effectively be provided using a joint or associated contract with the provider, and the other public organisation want to renew the contract with the provider; and

the relevant senior leadership team member is satisfied that the supplier in question has the skills or experience needed to provide the goods or services and that the cost of the service is reasonable and represents best value in all the circumstances. **Exceptions which do not need you to fill in the request for waiver form (Annex 1 of these regulations)**

V8 We will grant an exception to these regulations and you will not need separate authorisation in the following circumstances.

- If you place an order with a single provider under an existing corporate contract or framework agreement.
- If you place an order through a buying consortium of which we are a member.
- As part of a partnering contract that involves a series of contracts with one provider.
- If any law says we must contract differently from these standing orders.

- If you place an order under an arrangement, of which we are a member that has gone through a competitive process which meets EU conditions, for example, Buying Solutions.
- For goods, work or services which must be provided by a public utility or a local authority other than us under their legal powers.



| For office use only |  |
|---------------------|--|
| Value of the waiver |  |
| Granted or refused  |  |
| B case              |  |
| Risk                |  |
| Date                |  |
| <b>Note:</b>        |  |

## Request for waiver (exception) form

### Notes

- Please see the regulations on asking for waivers.
- **We must carry out a financial check in line with the council's Supplier Financial Appraisal Strategy (Annex 3).**
- No officer (including the Director of Law and Democracy) may approve a waiver that would mean we break the law or EU procurement law.
- You can make a request by email. You must make your request before the start of any procurement activity.
- You need to fill in and pass this form to the relevant officer authorised to sign and seal the contract or framework agreement, before you enter into any contract or framework agreement.

You still need to keep to certain EU directives even if we do grant a waiver. Please ask for the advice of a procurement advisor for the following procurements.

- Part-B services (for example, education, social services and health) and single-supplier procurements (regulation 14) that are over the EU limit are only partly exempt from EU procurement law.
- A copy of the filled-in waiver form signed by everyone involved should be placed on the contract file and a copy must be sent to Staffordshire Procurement for filing on our waiver database. Send it to: [alison.morgan@staffordshire.gov.uk](mailto:alison.morgan@staffordshire.gov.uk).
- If your request is for a contract over £100,000 (not including VAT), you must send it to the Director of Law and Democracy for approval.
- This request must not be filled in or signed by any individual who has a direct or indirect interest in the request.

|           |  | Add the information here |
|-----------|--|--------------------------|
| <b>1</b>  | <b>Title of the contract or framework agreement</b>  |                          |
| <b>2</b>  | <b>Description of goods, work or services</b>  |                          |
| <b>3</b>  | <b>Name of proposed provider, if you know it</b>   |                          |
| <b>4</b>  | <b>Length and value of contract</b>  |                          |
| <b>4a</b> | <p>Length of the contract or framework agreement (include initial term and any options to extend)</p> <p>Note</p> <p>A framework agreement should not generally be for more than four years.</p> | ..... years              |
| <b>4b</b> | If the contract or agreement lasts for more than four years, you need to provide justification for the extended period.  |                          |
| <b>4c</b> | If the proposed contract has been renewed or extended previously with the same provider or group of companies, please show this. (This may affect the total value of the contract.)              |                          |



|           |   | Add the information here  |
|-----------|---|---|
| <b>4d</b> | Have there been any previous waivers for this contract?   | <input type="checkbox"/> Yes <input type="checkbox"/> No<br>If <input type="checkbox"/> Yes, please provide details of: <ul style="list-style-type: none"> <li>• the date and value of the contract;</li> <li>• the dates and values of any previous waivers and any limits attached to previous waivers; and</li> <li>• the value of this waiver request.</li> </ul> |
| <b>4e</b> | Total value (not including VAT) of the proposed contract or agreement. This will <b>include any amounts shown in 4d total value over the full length of the contract including any extension period.</b><br><br>Note<br><br>Include all other expected matters such as maintenance support, licences, training, expenses and so on. |   |
| <b>4f</b> | If you cannot give a value, please provide a brief explanation.   |   |
| <b>5</b>  | <b>Budget</b>   |   |
| <b>5a</b> | Is there a budget available for the total value of the contract?  | <input type="checkbox"/> Yes <input type="checkbox"/> No  |
| <b>5b</b> | If <input type="checkbox"/> No, where is the funding coming from?   |   |

|           |  | Add the information here   |
|-----------|--|--|
| <b>5c</b> | Are there conditions attached to the funding?  | <div style="display: flex; justify-content: space-around;"> <input type="checkbox"/> Yes           <input type="checkbox"/> No         </div><br>If <input type="checkbox"/> Yes, include a brief summary of the funding conditions. |
| <b>6</b>  | <b>Evidence of value for money</b><br><br>Note<br><br>If you are not carrying out a formal tendering process, you <b>must</b> give evidence of value for money.  | Details of value for money:  |
| <b>7</b>  | <b>EU limits</b><br><br>Is the contract over any EU limits?<br><br><b>EU limits in January 2010</b> <ul style="list-style-type: none"> <li>• <b>Work of £3.9 million or more</b></li> <li>• <b>Goods and services of £156,442 or more</b></li> </ul>   | <div style="display: flex; justify-content: space-around;"> <input type="checkbox"/> Yes           <input type="checkbox"/> No         </div><br>If <input type="checkbox"/> Yes, fill in point 13.                                  |
| <b>8</b>  | <b>Procurement route</b><br><br>If the contract is over £100,000 (not including VAT), a procurement advisor must sign confirmation that there is not another more suitable procurement route.  | Procurement Advisor:<br><br>Signature .....<br>Name .....<br>Title .....   |
| <b>9</b>  | <b>Reason for request</b><br><br>Give a brief description of why you want the waiver.<br><br>Note<br><br>We tend to presume that all contracts and framework agreements will be formally tendered. If this is not the case, you must explain the reasons along with the actual procurement route you will use. |  |



|            |   | Add the information here |
|------------|---|--------------------------|
| <b>10</b>  | <b>Risks</b>  |                          |
| <b>10a</b> | <p>Give details of any significant risks, for example:</p> <ul style="list-style-type: none"> <li>• changes to standard contract clauses (legal);</li> <li>• CRB disclosures (HR);</li> <li>• non-standard insurance limits (public liability, employers' liability and professional indemnity insurance);</li> <li>• financial checks which reveal significant risk; and</li> <li>• others (please give details).</li> </ul> |                          |
| <b>10b</b> | Why are we taking on any significant risks?   |                          |
| <b>11</b>  | <p><b>Other information</b></p> <p>Other relevant information (if this applies)</p>   |                          |
| <b>12</b>  | <p><b>Exit plan</b></p> <p>What are the plans for providing goods, work or services at the end of the contract, for example, the need to re-tender or is this a one-off project?</p>  |                          |

| Contracts over the EU limits |   |   |
|------------------------------|---|---|
| <b>13</b>                    | Does the request for waiver fall within one of the following categories?<br><br>Contract for: | <input type="checkbox"/> Yes <input type="checkbox"/> No<br><br>Note<br>If <input type="checkbox"/> No , we will probably refuse the request for waiver if the contract is over the EU limit. |
| <b>a</b>                     | buying or developing material for broadcasting  |   |
| <b>b</b>                     | arbitration or conciliation services  |   |
| <b>c</b>                     | financial services in connection with issuing, buying, selling or transferring securities     |   |
| <b>d</b>                     | central bank services   |   |
| <b>e</b>                     | employment and other contracts of service   |   |
| <b>f</b>                     | research and development services, unless only for our benefit and paid for by us             |   |
| <b>g</b>                     | services, where we have the exclusive right to provide the service                            |   |
| <b>h</b>                     | EU Services Directive Part B Service  |   |
| <b>i</b>                     | EU Regulation 14 exemption  |   |

**Authorising officer request**

|           |   |  |
|-----------|---|--|
| <b>14</b> | <p>Only the authorised officer can fill this in</p> <p><b>I confirm that the information set out above is correct.</b></p> <p>Your signature:</p> <p>Name:.....</p> <p>Post: .....</p> <p>Phone:.....</p> <p>Date:.....</p> <p>(Either type your name or use your signature.)</p> |  |
|-----------|---|--|

**Authorisation by the Service Director**

**For contracts over £100,000, you must also get authorisation from the Director of Law and Democracy.**

|           |  |          |         |  |
|-----------|--|----------|---------|--|
| <b>15</b> |  | Approved | Refused |  |
|-----------|--|----------|---------|--|

|           |  |  |
|-----------|--|--|
| <b>16</b> | <p>Comments and restrictions, limits on approval or reasons for refusal (if any)</p> |  |
|-----------|--|--|

|           |   |
|-----------|---|
| <b>17</b> | <p>Signature .....</p> <p>Name.....</p> <p>Post or title .....</p> <p>Date .....</p> <p>(typed name or email signature)</p> |
|-----------|---|

|           |  |          |         |  |
|-----------|--|----------|---------|--|
| <b>18</b> |  | Approved | Refused |  |
|-----------|--|----------|---------|--|

|           |  |  |
|-----------|--|--|
| <b>19</b> | <p>Comments and restrictions, limits on approval or reasons for refusal (if any)</p> |  |
|-----------|--|--|

|           |  |
|-----------|--|
| <b>20</b> | <p>Name or signature .....</p> <p>Post or title .....</p> <p>Date .....</p> <p>(typed name or email signature)</p> |
|-----------|--|



## **Scheme of delegation – sub-delegation scheme for procurement**

### **Introduction**

This scheme sets out the level and scope of delegated authority for post holders within a portfolio or section to carry out the duties and authorities given to the senior leadership team member under the formal delegation scheme.

### **Note**

- 1** Depending on a few specific exceptions, a delegation will be given to a post holder identified by their relevant salary scale and position in a band or level set out in the table below.
- 2** Depending on any restrictions set out in the table or a personal exclusion, each officer within a band or level has authority to carry out all the delegations appropriate to that band or level.
- 3** Unless there is a specific exemption or restriction, an officer at a higher band will have authority to carry out all the delegated authority of officers at a lower band.
- 4** Any other delegation must be in writing and a copy given to the officer. A record must also be kept within each portfolio.
- 5** Any officer may have their delegated authority suspended, removed or limited (a personal exclusion). For example, this may include induction periods to allow for training and development or if a senior leadership team member wants to carry out tighter monitoring of how powers are being used. (This is not considered as a disciplinary matter.)
- 6** Any officer using delegated authority must keep to our integrity policy and local rules together with any relevant financial regulations.
- 7** Any officer using delegated authority may be asked to produce written confirmation of their authority. A reference to the Published Scheme of Delegation or a signed copy of the specific written authority will be enough.
- 8** Each officer using delegated authority is responsible for making sure they have the authority to carry out the function and that they keep to any restrictions or exemptions.



## Table of delegation

| Band     | Definition (Post or scale point included)                                |
|----------|--|
| <b>A</b> | Senior leadership team member  |
| <b>B</b> | Post graded 15 and 16  |
| <b>C</b> | Post graded 12 to 14   |
| <b>D</b> | Any post graded 9 to 11  |
| <b>E</b> | Any post graded 8  |
| <b>F</b> | Other post designated by name to carry out a particular delegated power. |

| P No     | Sub-delegation (action or issue)  | Delegation band | Restrictions and conditions  |
|----------|---|-----------------|--|
|          | <b>General note</b>   |                 | <p>Any action using delegated authority must keep to the procurement regulations</p> <p>For any contract worth more than £100,000, you must get advice from a procurement advisor.</p> <p>The word contract also refers to framework agreements.</p> <p>For all ICT procurement, you must work with an ICT procurement advisor to make sure all orders are placed through Staffordshire ICT.</p> |
| <b>1</b> | <b>Waivers and business-case decisions</b>  |                 |  |
| <b>a</b> | Granting an exemption (waiver) to procurement regulations – with a contract value under £100,000        | <b>B</b>        | <p>You must keep a record of the waiver – see standard form (on website).</p> <p>Only ICT-approved staff can grant an exemption (waiver) to procurement regulations (with a contract value under £100,000) and sign contracts for ICT-related goods and services.</p> <p><b>The waiver request must be signed by a procurement advisor before you apply</b></p>                                  |
| <b>b</b> | Granting an exemption (waiver) to procurement regulations – with a contract value of more than £100,000 | <b>B</b>        | <ul style="list-style-type: none"> <li>- Director of Law and Democracy <b>only</b></li> <li>- No waiver may be granted if it will break EU procurement rules</li> <li>- The waiver request <b>must</b> be signed by a procurement advisor before you apply.</li> </ul>   |
| <b>c</b> | Awarding a contract lasting more than four years  | <b>B</b>        | You must consult a procurement advisor. They may refer the matter for legal advice.  |



|          |  |          |   |
|----------|--|----------|---|
| <b>d</b> | Authority to change the terms and conditions of a contract, or to accept any providers' terms and conditions | <b>C</b> | You must consult the Director of Law and Democracy.<br><br>You must carry out risk assessments on any changes.  |
| <b>2</b> | <b>Procurement method to use</b>   |          |   |
| <b>a</b> | Decision not to use our framework agreement or contract  | <b>B</b> | You must consult a procurement advisor and the Director of Law and Democracy.   |
| <b>b</b> | Authority to agree evaluation criteria for contracts   | <b>C</b> | For contracts over £100,000, you must involve a procurement advisor and you must keep to EU procurement rules.  |
| <b>c</b> | Authority to carry out an e-auction or e-tender  | <b>C</b> | You must consult a procurement advisor.   |
| <b>d</b> | Authority to enter into joint purchasing arrangements (with another public organisation)                     | <b>C</b> | You must consult a procurement advisor.   |
| <b>e</b> | Authority to use the competitive dialogue procedure (EU tenders)   | <b>C</b> | You must consult the Director of Law and Democracy (or someone they choose).  |
| <b>f</b> | Authority to carry out clarification or negotiation after a tender   | <b>D</b> | You must consult a procurement advisor. Unless you are using the negotiated route, negotiations cannot take place if they break EU procurement rules. |
| <b>g</b> | Authority to move from the restricted procedure for EU contracts to the negotiated procedure                 | <b>C</b> | You must consult the Director of Law and Democracy (or someone they choose).  |

| <b>3 Tender and acceptance</b> |   |                          |   |
|--------------------------------|---|--------------------------|---|
| <b>a</b>                       | Authority to accept a variant bid tender  | <b>C</b>                 | You must consult a procurement advisor, and must not break EU procurement rules.  |
| <b>b</b>                       | Authority to witness the opening of tenders   | <b>E or F</b>            | As long as they are not involved in the procurement process.  |
| <b>c</b>                       | Authority to accept most economically advantageous tender (MEAT) or lowest-priced tender and to award a contract    | <b>B</b><br><br><b>C</b> | You must consult a procurement advisor. And, keep a record of the scoring method.<br><br>Head of Categories in Staffordshire Procurement <b>only</b> if the Head of Procurement is not available. |
| <b>d</b>                       | Authorisation to give the briefing to unsuccessful companies who provided tenders (other than standard information) | <b>D</b>                 | Procurement officer<br>See the guidance on debriefing. You must consult a procurement advisor. You must also not discuss commercially sensitive information.                                      |
| <b>4 CRB</b>                   |   |                          |   |
| <b>a</b>                       | Authority to rule that CRB clearance is not needed for providers on a contract                                      | <b>B</b>                 | You must complete the risk-assessment process and keep a record. If you are in doubt or you have identified a risk, you must consult the Director or Law and Democracy (or someone they choose).  |

| 5 | Signing and sealing  |   |  |
|---|--|---|--|
| a | Signing contracts<br>(within your own portfolio)<br><br>If it is an ICT procurement, see 5c. | B | Band 15 or 16 officers within the portfolio<br><br>The Director of Law and Democracy (or someone they choose) may sign any contract no matter what portfolio they are from.<br><br>This does not include contracts for land and contracts under seal.                                    |
| b | Signing contracts<br>(not within your own portfolio)   | B | The Director of Law and Democracy (or someone they choose) may sign any contract no matter what the value. If a contract needs to be signed by two senior leadership team members (for example, PFI contracts), one must be Director of Law and Democracy (or someone they have chosen). |
| c | Signing ICT contracts  |   | All ICT-related contracts must be signed in line with the ICT sub-scheme of delegation for procurement.  |
| d | Authority to decide which contracts are under seal   | B | Director of Law and Democracy only   |
| e | Sealing contracts and deeds  | C | Authorised officers in Law and Democracy only (Specific exemptions agreed by the Director of Law and Democracy apply to certain agreements.)   |
| f | Choosing and maintaining approved contract lists   | C | (Not including deletions)  |
| g | Deleting a provider from an approved contractors' list                                       | B | You must consult the Director of Law and Democracy and record your reasons for the decision.   |

|          |  |                 |   |
|----------|--|-----------------|---|
| <b>h</b> | Authority to carry out an assignment or novation               | <b>B</b>        | A Procurement Advisor in consultation with the Director of Law and Democracy must sign and the reasons for this must be recorded. |
| <b>6</b> | <b>Extending and ending contracts and price increases</b>      |                 |   |
| <b>a</b> | Authority to accept a price increase up to £15,000 in one year | <b>D</b>        | This must be done in line with procurement regulations.   |
| <b>b</b> | Authority to accept a price increase over £15,000 in one year  | <b>C</b>        | This must be done in line with procurement regulations.   |
| <b>c</b> | Authority to extend a contract period                          | <b>B</b>        | As above  |
| <b>d</b> | Authority to serve a default notice                            | <b>D</b>        | In consultation with the Director of Law and Democracy (or someone they choose).  |
| <b>e</b> | Authority to end a contract                                    | <b>C</b>        | You must consult the Director of Law and Democracy (or someone they choose).  |
| <b>7</b> | <b>Purchasing cards and savings</b>                            |                 |   |
| <b>a</b> | Approval for issuing a purchasing card (P-card)                | <b>D,E or F</b> | Officers below band D must be authorised within portfolio.  |
| <b>b</b> | Authorising P-card transactions                                | <b>E or F</b>   | This must be the budget holder (or someone they choose).  |
| <b>c</b> | Savings sign-off   | <b>D</b>        | A procurement advisor must do this with the relevant Joint Finance Unit (JFU) head, and client.                                   |

## **Supplier financial appraisal strategy**

### **Aim**

The aim of the supplier financial appraisal strategy is to reduce as far as possible the effect of a business failure on the most vulnerable in the community.

### **Principles**

The strategy is based on:

- the need to help the procurement officer or lead commissioning manager make the right decision for all main critical contracts;
- promoting competition when buying goods, work, services and utilities;
- choosing the most suitable suppliers of goods, work, services and utilities based on a set of financial and market measures;
- the need to take account of the level of risk associated with the supply, service or supplier; and
- the ongoing assessment of the supplier's financial strength.

### **The main responsibilities**

While the final decision to reject an applicant for financial reasons rests with the Director of Finance and Resources (in practice this decision is delegated to the relevant joint finance unit), the emphasis will be based on a partnership approach. This involves the procurement officer, lead commissioning manager and a representative from the relevant joint finance unit.

The procurement officer will gather financial information, in the first instance.

Internal Audit will monitor how we follow this strategy through their planned procurement audit assignments carried out each year.

## Method

The following method applies for all contracts awarded using a tendering procedure or waiver.

For contracts with a value of **less than £100,000** and where the supply or service is not seen as a priority 1 critical supply, you do not need to carry out a financial appraisal before awarding a contract.

For contracts with a value over **£100,000 but less than £1 million** and where the supply or service is not seen as a priority 1 critical supply, the procurement officer and lead manager and relevant Joint Finance Unit will decide whether a financial appraisal is needed, before the contract is awarded.

The basic assessment involves four questions as shown below.

- a Is the type of supply or service being bought 'routinely' rather than as a one-off purchase?
- b Is the supply or service readily available from a number of other suppliers?
- c Can the supply or service be easily substituted?
- d Are contract payments only made once we have received the supply or service?

If you answer no to any of the four questions, you will normally carry out a financial appraisal using the same process and a choice of those factors (1 to 8) shown below.

The procurement officer, lead commissioning manager and a representative from the relevant joint finance unit will decide on the need to carry out a financial appraisal for each year of the contract.

We will carry out detailed financial appraisals:

- for all tendering exercises **over £1 million**; or
- if the supply or service is a priority 1 critical supply.



## Pre-contract award

### Factors to be discussed

- 1 We will take account of output from financial checks carried out using the financial assessors N2Check, Dunn & Bradstreet and Experian (based on those accounts lodged with Companies House).
- 2 We will analyse the latest set of accounts (if not lodged with Companies House).
- 3 We will carry out financial checks on the parent company (if there is one).
- 4 We will award the contract value when compared to:
  - the recommended total yearly contract value as defined by N2Check;
  - the market standard of no more than 25% of turnover; and
  - the current total spending with the tender applicant.
- 5 In terms of the nature of the contract, we will look at:
  - the type of supply or service (for example, regular or one-off);
  - the extent of competition within the market (for example, how easy to source the contract); and
  - the payment terms (for example, payment in advance or payment once the goods or services are received).
- 6 We will also look at information from suppliers gathered through current arrangements for managing portfolios or from other sources.
- 7 We will check the movement in share prices (if this applies).
- 8 For sole traders and partnerships, we need to change certain factors. For example, we will replace factors 1 and 2 with the requirement for tender applicants to fill in a financial assessment in a format set by the Director of Finance and Resources. This will show certain information on trading accounts for the last three years. The assessment will automatically work out the average liquidity score.

Following on from the above, we will assess whether to reject the tender for financial reasons. Before we reject it, we will consider the need to get (where appropriate) a banker's reference or parent company guarantee. We will record and keep the result of this assessment (including the reasons behind it).

### **Post-contract award**

In assessing the ongoing financial strength of suppliers, we will repeat the above process for each year of the contract within one month of the anniversary of the contract award date. This will help us manage contracts effectively.

## Glossary of terms

**Approved contractors list** is a list of suitably accredited and qualified providers from which we ask for quotations or tenders without the need to advertise the procurement.

**Buying Solutions** is the online catalogue which is run by HM Government and provides a framework buying tool for local authorities and others in the public sector. The website address is [online.buyingsolutions.gov.uk](http://online.buyingsolutions.gov.uk).

**Competitive dialogue procedure** is used when we cannot provide a precise specification and where there is scope to negotiate about what services companies can provide. The purpose of this procedure is to negotiate on the specification of the project and not on the price.

**Consortium** means an association of several business organisations who are legally bound together to work towards a commonly held aim. Or, it can mean two or more economic operators (UK Public Contract Regulations 2006).

**Contract** means any agreement where we agree to carry out or to buy or sell any goods, work, services or utilities for payment or otherwise.

**Electronic procurement** means procurement using the internet, including online e-auctions and buying portals on the internet. You can take advantage of reduced minimum time periods when you arrange your contracts under the EU procurement regime and send your documents electronically. You can get advice and guidance on this from a procurement advisor.

**EU procurement regulations** means the Public Contract Regulations 2006 together with relevant EU directives, case law and guidance issued.

**Framework agreement** means an agreement or other arrangement which sets the terms (in particular the price and, where appropriate, quality) under which the provider will enter into one or more contracts or a series of contracts with us. This may also be referred to as a call-off contract, a continuous contract or a standing offer.

**Head of Procurement** means the council's Head of Corporate Procurement in Finance and Resources Directorate.

**'Lowest tender in price terms'** for accepting a tender means either the lowest cost or, if the evaluation is not just based on price, the most economically advantageous tender score after an evaluation.



**Open procedure** This means an advert will be placed in OJEU and relevant press and trade journals. The tender will be open to anyone who shows an interest.

**Procurement advisor** is a qualified member of the Chartered Institute of Purchasing and Supply (MCIPS) or has an equivalent qualification or appropriate experience.

**Procurement Board** is the board made up of the Head of Procurement, the portfolio senior representatives, the Leader of the County Council and Member Procurement Champion.

**Public organisation** includes any organisation which may award a public contract under the Public Contract Regulations 2006.

**Public services contract** is one under which we employ a person to provide services. The EU Services Regulations divide services into two categories: Part-A services and Part-B services (see table below)

**Public works contract** is a contract to buy goods (not land or the product of an activity); or hire goods, whether or not we install them. Public works contract is a contract for carrying out work under which we employ a person to do the work.

**Restricted procedure** means an advert will be placed in OJEU, and the relevant press and trade journals. Organisations which express an interest will have to fill in a pre-qualification questionnaire (PQQ). We will evaluate the PQQs and produce a shortlist of suitable organisations which we will then invite to tender.

**Senior leadership team (SLT) member** is appointed under Article 12 of the Constitution. This includes the Chief Executive, Director of Finance and Resources, Director of Law and Democracy, Director of Place, Director of People, Director of Transformation and Strategy, Director of Customer Services and Communication and any other appropriate people authorised to carry out the duties shown in these regulations in line with delegations made by the SLT member under a Sub Scheme of Delegation approved by the Audit Committee..

**‘Signing’** a contract includes arrangements for formally accepting a tender, if this is covered in the procurement regulations.

**‘Staffordshire compact’** is an agreement between public-sector and third-sector organisations in Staffordshire which clarifies how they work together and the expectations of everyone involved. It encourages each sector to answer for their actions and to provide a resolution procedure.

**Standstill period** is the period of time between giving notice of our plan to award the contract and the confirmation of the award of the contract which is needed under the EU procurement regulations. This gives unsuccessful companies the chance to ask for a debriefing and to challenge an award of a contract.

**'Supply'** includes buying, leasing, hiring or renting goods or services or arranging any form of credit for them (this can also include when we do not pay anything for those goods or services).

**'Tendering'** means a formal procedure for getting written offers (tenders) for supply.

**'Third sector'** means non-governmental organisations that are driven by value and which mainly reinvest any profit to further social, environmental or cultural aims. The sector includes voluntary and community organisations, charities, social enterprises, faith groups, housing associations and co-operatives and mutuals.

**'Value for money'** is not the lowest price but the best combination of whole-life costs and quality to meet users' needs. You should always assess value for money over the whole life of the contract and you should take into account all costs and benefits to society as a whole including the environmental and social benefits and costs, not just those directly relevant to us. (OGC 2008).

**Works** are defined as including:

- building and civil engineering work;
- installing, for example, heating and electrical equipment or ICT equipment;
- carrying out work such as tiling and papering; and
- maintaining buildings.

We may also treat the following activities as a contract for **work**.

- A contract where we employ a provider to act as our agent when letting contracts.

An agreement where a developer constructs a building on their own land (according to our needs) and then transfers the land and structure to us at a later date.

## Part A and part B services

**Part A services** are listed in Part A of the Schedule I to the EU Services Regulations. These include the following.

|   |  |
|---|--|
| Maintaining and repairing vehicles and equipment.   | Accounting, auditing and book-keeping services.  |
| Transport by land, including armoured car and courier services but not transporting mail and transport by rail. | Market research and public-opinion polling services.   |
| Transport by air but not transporting mail.   | Advertising services.  |
| Transporting mail by land, other than by rail or air.   | Architectural services.  |
| Telecommunications services.  | Computer and related services.   |
| Financial services such as:<br>a insurance services; and<br>b banking and investment services.                  | Management consultancy services and related services, but not arbitration and conciliation services. |
| Building-cleaning services on a fee or contract basis.  | Publishing and printing services on a fee or contract basis.   |
| Research and development if the benefits only apply to us.  | Sewerage and refuse disposal service and sanitation and similar services.                            |

**Part B services** are covered by limited conditions – rules on technical specifications, contract award notices and providing statistical reports. Part B services are all those services set out in Part B of Schedule I to the EU Services Regulations. They include all those services that fall outside of Part A. Part B services include the following.

|   |  |
|---|--|
| Education and vocational health services.     | Personnel placement and supply services.                               |
| Health and social services.                   | Investigation and security services, other than armoured car services. |
| Recreational, cultural and sporting services. | Hotel and restaurant services.   |
| Supporting and other transport services.      | Transport by rail.   |
| Legal services.                               | Transport by water.  |

If a contract involves both Part A and Part B services, it is classed based on the service that has the greatest value of the different parts of the contract.