

NDDC CONSTITUTION

Part 4

CONTRACT PROCEDURES RULES

PART 1 General

1. Definitions and interpretation

In these Contract Procedure Rules the following words and expressions shall have the following meanings:

2015 Regulations the Public Contracts Regulations 2015 (as amended)

Central Purchasing Body an authority that:

- (a) acquires goods or services intended for one or more contracting authorities;
- (b) awards public contracts intended for one or more contracting authorities; or
- (c) concludes Framework Agreements for works, goods or services intended for one or more contracting authorities

Contracts Finder a web-based portal provided, pursuant to the 2015 Regulations, by or on behalf of the Cabinet Office

Contracts Finder Threshold the financial threshold, set from time to time by the Cabinet Office, over which the Council must publish procurement information on Contracts Finder

Controlled Organisation an organisation which:

- (a) carries out more than 80% of its activities with the Council (or the Council jointly with other public authorities);
- (b) the Council (or the Council jointly with other public authorities) exercises decisive influence over in respect of both its strategic objectives and significant decisions; and
- (c) has no private sector ownership or any intention that there should ever be

Dynamic Purchasing System an electronic market place through which the Council and other contracting authorities can source requirements by inviting tenders from economic operators admitted to the system

Financial Procedure Rules the Financial Procedure Rules set out in Part 4 of the Constitution.

FTS the Find a Tender Service

Framework Agreement an agreement, procured by a Central Purchasing Body, which sets up a framework which allows the Council to call off a contract with a supplier/contractor to provide goods, services or works without having to run its own procurement, provided such contract is called off in accordance with the terms of the agreement

Jan 2024

NDDC CONSTITUTION

Part 4

Innovation Partnerships long term partnerships which allow for both the development and subsequent purchase of new and innovative products, services or works

ITT invitation to tender in the form available from Legal Services

Leader the Leader of the Council

Officer any officer of the Council designated by their Head of Service to deal with the contract in question

PQQ pre-qualification questionnaire in the form available from Legal Services

Pre-Procurement Stage the stage of the commissioning process where the subject of a procurement is conceived ending on the earliest of:

- (a) the publishing of an advertisement or notice seeking expressions of interest for the contract, in any form whatsoever;
- (b) an expression of interest or offer being sought or responded to; or
- (c) a contract being entered into or a framework agreement being concluded

Procurement Documentation shall include RFQ, PQQ, ITT and other procurement documentation and associated documentation as relevant to the procurement being conducted

Procurement Portal an online procurement portal compliant with paragraph 7.1 of these Contract Procedure Rules

Quotes Threshold shall be £12,000 (inclusive of VAT) or other amount as set by Council from time to time

Regulations the 2015 Regulations as amended, extended or re-enacted from time to time and includes any subordinate legislation for the time being in force made under it.

RFQ a request for quotation in the form available from Legal Services

RFW a request for waiver from compliance with these Contract Procedure Rules in the form available from Legal Services

Specification a description of exactly what goods, services, works or outcomes are to be provided under a contract

Standstill Period as provided by the Regulations, the mandatory period of at least 10 calendar days between the notification of the intended award of a contract and the actual award of a contract

Suitability Questions means questions to assess whether a potential supplier can meet the Minimum Standard required to be invited to tender

Tendering Threshold shall be £120,000 (inclusive of VAT) or other amount as set by Council from time to time

Verifying Officer the Senior Solicitor and Monitoring Officer or such other officer appointed by them to open tenders on the Procurement Portal.

Jan 2024

NDDC CONSTITUTION

Part 4

2. Compliance with the Contract Procedure Rules

- 2.1 These Contract Procedure Rules refer to the selection, award and entry into any contract by the Council and by any person or representative acting on behalf of the Council or Council partnership.
- 2.2 Every contract to be entered into on behalf of the Council shall comply with:
- (a) domestic legislation, common law and UK procurement legislation;
 - (b) the Financial Procedure Rules; and
 - (c) any other policies and procedures of the Council, insofar as they are directly relevant to that contract.
- 2.3 It shall be a condition of any contract between the Council and any person who is required to supervise a contract on behalf of the Council (where that person is not an Officer), that in relation to such a contract he/she shall comply with the requirements of these Contract Procedure Rules as if he/she were an Officer. Failure to comply with the Contract Procedure Rules may result in the termination of any contract between the Council and any person who is required to supervise a contract on behalf of the Council.
- 2.4 Any non-compliance or breach of these Contract Procedure Rules shall follow the following procedure:
- (a) It will be reported immediately on discovery to the dedicated procurement email address and escalated to the Senior Solicitor & Monitoring Officer and the Head of Governance.
 - (b) The Senior Solicitor & Monitoring Officer will undertake an investigation, where deemed necessary, with the investigation findings reported to the Senior Management Team.
 - (c) Investigation findings will be referred to Human Resources where any breach of these Contract Procedure Rules requires further action in accordance with human resources policies, including disciplinary action.
- 2.5 In the event of failure by Officers to comply with the Contract Procedure Rules, the Council may invoke its disciplinary policy and procedure depending on all the circumstances of any such failures.

3. Delegated Authority

- 3.1 Any procurement carried out on behalf of the Council may be undertaken only by those Officers with the appropriate delegated authority to carry out such tasks as set out in the Council's scheme of delegation and such

NDDC CONSTITUTION

Part 4

Officers authorised by Council and which have been notified and recorded in the register held by Members Services.

4. Exemptions and exceptions from the Contract Procedure Rules

4.1 Subject to the requirements of the Regulations and UK procurement legislation, the following contracts are exempt from the requirements of the Contract Procedure Rules:

- (a) contracts of employment;
- (b) contracts relating solely to the disposal or acquisition of an interest in land;
- (c) transactions conducted by the Chief Financial Officer in respect of dealing in the money market or obtaining finance for the Council; and
- (d) the appointment of counsel or specialist legal representative by the Senior Solicitor and Monitoring Officer to advise the Council generally.

4.2 Subject to the requirements of the Regulations, the following contracts are exempt from the requirements of Part 3 of the Contract Procedure Rules:

- (a) contracts of a value less than the Quotes Threshold;
- (b) contracts procured through a Central Purchasing Body in accordance with paragraph 20 below;
- (c) contracts with another public authority where such contracts include no private sector participation whatsoever and, in the opinion of the Senior Solicitor and Monitoring Officer:
 - (i) the contract establishes or implements a co-operation between the Council and other participating public authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;
 - (ii) the implementation of co-operation as referred to in 4.2(c)(i) is governed solely by considerations relating to the public interest; and
 - (iii) the participating public authorities (including the Council) perform, on the open market, less than 20% of the activities concerned by the cooperation;
- (d) contracts with Controlled Organisations

4.3 An exception from the provisions in these Contract Procedure Rules relating to the selection, award and entry into contracts may be made by:

- (a) resolution of the Council;
- (b) resolution of the Strategy and Resources Committee;

NDDC CONSTITUTION

Part 4

- (c) an urgent decision of Chief Executive in accordance with Article 11.8 of Part 2 of the Constitution; or
 - (d) by authorisation via a RFW in accordance with paragraph 12.2 below providing that they are satisfied that the exemption is justified on special circumstances and details of those special circumstances are recorded at the time the exception is given.
- 4.4 Whenever an exception is made under 4.3(a), 4.3(b) or 4.3(c) above, the Senior Solicitor and Monitoring Officer should make arrangements for an item to be placed on the agenda of the next meeting following of the Governance Committee for that Committee to note the details of the exception and the reasons for it.
- 4.5 Where authorisation is given to waive these Contract Procedure Rules in accordance with paragraph 4.3 above an appropriate contract must be issued to the supplier and the details of the award entered onto the Contract Register, Contracts Finder and the FTS as appropriate and as required by the Regulations.
- 4.6 The Senior Solicitor & Monitoring Officer must keep a record of all cases where an exemption from these Procedures has been requested and authorised or declined and will report these to the Senior Management Team on a six-monthly basis.
- 4.7 For the avoidance of doubt the exemptions referred to in this paragraph 4 do not provide an exemption to the best value duty on the Council in section 3 of the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

5. Equality

- 5.1 In the procuring of works, services and supplies, organisations that are awarded tenders are acting on behalf of the Council and will be expected to comply with current equality legislation in the same manner as the Council, in both employment and service delivery.
- 5.2 In accordance with the requirements of the Public Services (Social Value) Act 2012; where the Council is conducting a procurement of services, and the value of such services is estimated to be in excess of the relevant threshold pursuant to the Regulations, full consideration must be given, and, where appropriate, consultation undertaken and conclusions recorded, at the Pre-Procurement Stage in respect of:

NDDC CONSTITUTION

Part 4

- (a) how what is proposed to be procured might improve the economic, social and environmental well-being of the Council's area; and
- (b) how the Council may act with a view to securing that improvement in conducting the process of procurement.

6. Procurement Strategy

- 6.1 The Devon Districts Procurement Strategy (and any variation, update or replacement to this Strategy from time to time) must be adhered to in the procuring of all works, services and supplies.

7. Procurement Portal

- 7.1 The Council shall at all times maintain an effective Procurement Portal which must:
 - (a) be an appropriate and secure system for transmitting Procurement Documentation and receiving responses to such Procurement Documentation;
 - (b) be capable of recording evidence and an audit trail of all activity in respect of a procurement; and
 - (c) be capable of preventing:
 - (i) the opening of tenders until the deadline for the receipt of tenders has passed; and
 - (ii) the editing of, or otherwise tampering with, tenders at any point.

PART 2

Before entering into a contract/procurement

8. Preparation

- 8.1 In the case of every contract Officers must ensure that they have sufficiently planned the procurement of a contract by:
- (a) estimating its value in accordance with paragraph 9 below; and
 - (b) taking preparatory action as required in the Pre-Procurement Stage as appropriate to the complexity and value of the contract.

9. Estimating contract value

- 9.1 The calculation of the estimated value of a procurement shall be based on the total amount payable, inclusive of VAT, as estimated by the Officer, including any form of option and any renewals of the contract(s) as explicitly set out in the Procurement Documents.
- 9.2 Where there is any provision for prizes or payments to potential suppliers or tenderers this must be taken into account when calculating the estimated value of the procurement.
- 9.3 As the Council is comprised of separate operational departments, account must be taken of the total estimated value for all of those departments.
- 9.4 Where a contract for services does not indicate a total price, the basis of calculating the estimated contract value shall be:
- (a) in the case of fixed term contracts where that term is less than or equal to 48 months, the total value for their full term; or
 - (b) in the case of contracts without a fixed term or with a term greater than 48 months, the monthly value multiplied by 48.
- 9.5 Where a contract for supplies relates to the leasing, hire, rental or hire purchase of products, the basis for calculating the estimated contract value shall be:
- (a) in the case of fixed term contracts, where that term is less than or equal to 12 months, the total estimated value for the term of the contract or, where the term of the contract is greater than 12 months, the total value including the estimated residual value; or

NDDC CONSTITUTION

Part 4

- (b) in the case of contracts without a fixed term, or a term which cannot be defined, the monthly value multiplied by 48.
- 9.6 Where a supply or service contract is, by nature, regularly procured or are intended to be renewed within a given period, the calculation of the estimated contract value shall be based on either:
- (a) the total actual value of the successive contracts of the same type awarded during the preceding 12 months or financial year adjusted, where possible, to take account of the changes in quantity or value which would occur in the course of the 12 months following the initial contract; or
 - (b) the total estimated value of the successive contracts awarded during the 12 months following the first delivery, or during the financial year where that is longer than 12 months.
- 9.7 In the case of the following service contracts, the basis for calculating the estimated contract value shall, where relevant, be as follows:
- (a) in the case of insurance services, the premium payable and other forms of remuneration;
 - (b) in the case of banking and other financial service, the fees, commissions payable, interest and other forms of remuneration; and
 - (c) in the case of design contracts, the fees, commissions payable and other forms of remuneration.
- 9.8 In the case of a contract for works, the calculation of the estimated value shall take account of both the cost of the works and the total estimated value of the supplies and services that are made available to the contractor by the contracting authority provided that they are necessary for executing the works.
- 9.9 The estimated value of a contract shall be calculated as at the moment at which the call for competition is sent or, in cases where a call for competition is not foreseen, at the moment at which the Council commences the relevant procurement procedure.
- 9.10 The method of estimating the value of a public services or works concession contract (which shall be where the consideration for the provision of the services or works consists either solely in the right to exploit the service/work or in this right together with payment) shall be:
- (a) for a public services concession contract: the total turnover of the concessionaire in consideration of the services being the object of the concession, as well as for the supplies incidental to such services, generated over the duration of the contract; or

NDDC CONSTITUTION

Part 4

- (b) for a public works concession contract: the value of the consideration which the contracting authority would expect to give for the carrying out of the work or works if it did not propose to grant a concession.

9.11 Where a contract is proposed to be awarded in the form of separate lots, account shall be taken of the total estimated value of all such lots except that the Council may separately award individual lots where the estimated value (calculated in accordance with paragraph 9.1 above) of the lot(s) concerned:

- (a) is less than the threshold provided for this purpose in the Regulations; and
- (b) the aggregate value of the lots awarded on this basis does not exceed 20% of the aggregate value of all of the lots into which the proposed contract has been divided.

9.12 In the case of Framework Agreements and Dynamic Purchasing Systems, the value to be taken into consideration shall be the maximum estimated value (calculated in accordance with paragraph 9.1 above) of all the contracts envisaged for the total term of the Framework Agreement or the Dynamic Purchasing System.

9.13 In the case of Innovation Partnerships, the value to be taken into consideration shall be the maximum estimated value (calculated in accordance with paragraph 9.1 above) of the research and development activities to take place during all stages of the envisaged partnership as well as of the supplies, services or works to be developed and procured at the end of the envisaged partnership.

9.14 For consistency, contract values should be calculated in accordance with the Regulations even when the Regulations are not applicable. This includes the requirement to aggregate the value of a series of orders or contracts placed with the same supplier.

9.15 Contracts for works, services and supplies, or any combination of them, are not to be split or subdivided with the effect of preventing them from falling within the scope of either these Contract Procedure Rules or the Regulations.

10. Pre-Procurement Stage

10.1 The Pre-Procurement Stage shall include:

NDDC CONSTITUTION

Part 4

- (a) ensuring that an appropriate Specification (relevant to the value of the contract) is prepared or otherwise put in place;
 - (b) the identification of relevant contract terms;
 - (c) where a contract is not exempt from the requirements of Part 3 of these Contract Procedure Rules pursuant to paragraph 4.2 above:
 - (i) the preparation of all relevant Procurement Documentation (including, where applicable, an ITT prepared in accordance with paragraph 13.5 below); and
 - (ii) the engagement of all relevant officers (as appropriate to the value and/or complexity of the contract or procurement) to advise and assist; and
 - (d) any other preparation which the relevant Head of Service and/or the Senior Solicitor and Monitoring Officer deems appropriate.
- 10.2 The Pre-Procurement Stage may, where the relevant Head of Service deems it fit, include conducting preliminary market consultations with a view to preparing the procurement and informing economic operators of the Council's procurement plans and requirements.
- 10.3 Such consultations referred to in paragraph 10.2 may include seeking or accepting advice from independent experts, authorities or from market participants. Such advice can then be used in subsequent planning and conduct of contract and the procurement procedure provided that a suitable audit trail is maintained on the relevant Officer's file and the advice does not, in the opinion of the Senior Solicitor and Monitoring Officer, have the effect of distorting competition and does not breach requirements for non-discrimination and transparency.
- 10.4 Where an economic operator has advised the Council, or has been otherwise involved, in the Pre-Procurement Stage for a specific procurement and then wishes to participate in that procurement process that economic operator cannot automatically be banned from participating however appropriate measures must be taken to ensure, to the satisfaction of the Senior Solicitor and Monitoring Officer, that competition will not be distorted by the participation of that economic operator. Such measures shall include:
- (a) providing all potential suppliers with relevant information exchanged or arising out of the economic operator's prior involvement; and
 - (b) where the procurement process involves tendering, the provision of adequate time limits for the return of tenders.

NDDC CONSTITUTION

Part 4

An economic operator may only be excluded on the basis of their prior involvement where, in the opinion of the Senior Solicitor and Monitoring Officer, there are no other means to ensure compliance with the duty to ensure equal treatment.

PART 3 Procurement

11. Procurement generally

11.1 Save as provided in paragraph 12 below:

- (a) all Procurement Documentation shall only be transmitted to interested parties via the Procurement Portal except in extenuating circumstances and with the authority of the relevant Head of Service; and
- (b) suppliers should also be required to respond to, or ask questions/ seek clarification about, Procurement Documentation via the Procurement Portal except where a procurement is being conducted separately of the Procurement Portal in accordance with paragraph 11.1(a) above.

11.2 Oral communication between Officers and potential suppliers is permitted provided it does not affect essential elements of the procurement and provided that a record is kept of decisions made.

12. Obtaining Quotations

12.1 Subject to 12.2 below (or unless the relevant Head of Service determines that a tender process contained in paragraph 13 is appropriate in relation to the proposed contract) where the Council intends to enter into a contract with an estimated value equal to or in excess of the Quotes Threshold but less than the Tendering Threshold:

- (a) quotations from at least three alternative suppliers shall be obtained using an RFQ;
- (b) quotations must be:
 - (i) based on the same Specification (prepared in accordance with paragraph 10.1 above) and contract terms (which shall be in accordance with paragraph 22 below);
 - (ii) based on the same evaluation criteria as selected within the RFQ and evaluated on a like for like basis; and
 - (iii) documented and recorded with the evaluation process and the decision to award recorded by the budget holder.

12.2 Where an Officer considers that they are unable to comply with paragraph 12.1:

NDDC CONSTITUTION

Part 4

- (a) it is not appropriate in the circumstances for three quotes to be obtained; or
- (b) the quotation evaluated as successful is not acceptable for any reason

the Officer may only set aside the requirements of paragraph 12.1 with the approval of the Head of Paid Service, the Senior Solicitor & Monitoring Officer, the Chief Financial Officer or any Head of Service as defined by paragraph 4.1 of Part 3 of this Constitution, such approval to be sought and recorded on a RFW. Once approved, a copy of the RFW shall be held on the relevant file of the Officer undertaking the procurement for at least the duration of the contract and the Officer must ensure compliance with paragraph 4.5 above.

- 12.3 The budget holder shall be responsible for notifying Legal Services when a contract is awarded which must be published on the Contract Register with details as required in accordance with paragraph 25 below.

13. Lower value tendering under the Contract Procedure Rules

- 13.1 Where at the time of the decision to purchase goods, services or works on behalf of the Council it is reasonably believed that the value of the goods, services or works to which the proposed contract or Framework Agreement relates will be between the Tendering Threshold and the relevant thresholds set out in the Regulations, then tenders shall be invited in accordance with the procedure set out below.

- 13.2 A notice advertising the tendering opportunity and containing, as a minimum, the information set out in paragraph 13.3 shall be given in accordance with paragraph 14 below.

- 13.3 The notice shall:

- (a) express the nature and purpose of the contract;
- (b) invite tenders for its execution;
- (c) state the last date and time when tenders will be received, being a period not less than 10 working days from the date of the advert or such longer period as may be required by law; and
- (d) identify the form of the contract.

- 13.4 An ITT (prepared in compliance with 13.5) including a Specification and contract terms (or at least making specific reference to the applicable contract terms), all with content as agreed with the Senior Solicitor and Monitoring Officer, shall be published on the Procurement Portal with the notice set out in 13.2.

Jan 2024

NDDC CONSTITUTION

Part 4

- 13.5 An ITT must include full details of the Council's requirements for the contract which it is procuring and shall set out:
- (a) where deemed appropriate to a procurement by the relevant Head of Service, Suitability Questions that are (in the opinion of the Senior Solicitor and Monitoring Officer):
 - (i) relevant to the subject matter of the procurement;
 - (ii) proportionate;
 - (iii) limited to assessing whether minimum standards of suitability, capability, legal status and/or financial standing are met; and
 - (iv) compliant with the Regulations, including any ministerial guidance issued by pursuant to the 2015 Regulations; and
 - (b) the evaluation criteria pursuant to which the Council will award the contract although it may, if the Officer deems it fit, allow for the submission of variant bids to encourage supplier innovation.

14. Notices

14.1 Where an Officer wishes to place an advert for a contract or Framework Agreement of a value in excess of the Contracts Finder Threshold in the public domain or to otherwise advertise to potential suppliers generally, and/or is required to do so pursuant to paragraph 14.2, the Officer must (having regard to any guidance issued by the Minister for the Cabinet Office):

- (a) ensure that the opportunity is published on Contracts Finder within 24 hours of the time when it first advertises the contract award opportunity in any other way including publishing at least the following:
 - (i) the time by which any interested supplier must respond if it wishes to be considered;
 - (ii) how and to whom such a supplier is to respond; and
 - (iii) any other requirements for participating in the procurement;
- (b) allow sufficient time for interested suppliers to become aware of the opportunity; and
- (c) ensure all relevant documents are made available free of charge (e.g. by a hyperlink to the Procurement Portal).

14.2 A contract compliant with paragraph 14.1 above shall be advertised by a suitably accessible advertisement published to an extent sufficient to enable the market to be opened up to competition. This shall include a notice placed:

- (a) on Contracts Finder in accordance with paragraph 14.1 above;

NDDC CONSTITUTION

Part 4

- (b) (if over the Tendering Threshold) on the Procurement Portal;
- (c) where deemed appropriate by the relevant Head of Service, taking into account and recording in the relevant file the likely interest in the contract (including the likelihood of any interest in the contract across the UK or the potential for international interest in the contract):
 - (i) in at least one local newspaper or other publication;
 - (ii) in a newspaper or journal (paper or web-based) circulating among such persons or bodies that undertake such contracts;
 - (iii) on FTS; and
- (d) in such publications as the law may from time to time require.

14.3 Without limiting the other requirements to publish details of an awarded contract as provided by the Regulations or as set out in paragraph 25 below, where an Officer has awarded a contract with a value in excess of the Contracts Finder Threshold they must, regardless of how the contract was initially advertised, within a reasonable time following contract award, ensure that at least the following information is published on Contracts Finder:

- (a) winning contractor's name;
- (b) date of contract conclusion;
- (c) value of the contract; and
- (d) if the contractor is a small to medium sized enterprise or a voluntary, community or social enterprise.

15. Tendering under the Regulations

15.1 Where, at the time of the decision to purchase goods, services or works on behalf of the Council, it is reasonably believed that the value of the goods, services or works to which the proposed contract or Framework Agreement relates will be around or in excess of the relevant threshold set out in the Regulations, then the Procurement Documentation must be prepared in accordance with the Regulations and in full consultation with the Senior Solicitor and Monitoring Officer.

15.2 A procurement conducted pursuant to the Regulations must be undertaken using one of the following procedures to be decided by the relevant Head of Service in consultation with the Senior Solicitor and Monitoring Officer:

- (a) open procedure;
- (b) restricted procedure;
- (c) competitive procedure with negotiation;
- (d) competitive dialogue procedure; or

NDDC CONSTITUTION

Part 4

- (e) innovation partnerships procedure.

15.3 The procedures provided at paragraphs 15.2(c), 15.2(d) or 15.2(e) may only be used with the authority of the Head of Paid Service and where:

- (a) needs cannot be met without adaptation of readily available solutions;
- (b) the contract includes design or innovative solutions;
- (c) the requirement is complex in nature, in its legal and financial make-up or because of its risks;
- (d) technical specifications cannot be established with sufficient precision; or
- (e) unacceptable or irregular tenders have been received in response to a procurement conducted in accordance with the procedures provided at paragraphs 15.2(a) or 15.2(b).

15.4 For the avoidance of doubt the same notice provisions as that set out at paragraph 14.2 shall apply when tendering under the Regulations save that all such contracts must be advertised by an appropriate notice on the FTS and the content of such notice shall be as stipulated by the Regulations and agreed following full consultation with the Senior Solicitor and Monitoring Officer.

15.5 In addition to the procedures set out in paragraph 15.2 the Council may, in exceptional circumstances and only with the authority of the Head of Paid Service in consultation with the Senior Solicitor and Monitoring Officer, award a contract by negotiation without prior publication of the contract opportunity on the FTS where (subject to any additional justifications provided by the Regulations):

- (a) no tenders/suitable tenders or requests to participate have been received in response to a procedure provided in paragraph 15.2;
- (b) only one supplier could apply for artistic/technical/exclusive rights reasons (in the last two cases provided no reasonable alternative exists and that the absence of competition is not the result of an artificial narrowing of the requirement);
- (c) extreme urgency from events unforeseeable by the Council (which means that the time limits for the procedures set out in paragraph 15.2 cannot be complied with) and the extreme urgency of the need is not attributable to the Council; or
- (d) products involved are manufactured purely for the purpose of research, experimentation, study or development.

16. Receipt of tenders

NDDC CONSTITUTION

Part 4

- 16.1 In accordance with the notice requirements set out in paragraphs 14 and 15.4, a procurement must be placed on the Procurement Portal and therefore, in accordance with paragraph 11, except where the relevant Head of Service determines the position should be otherwise (subject to the provisions of the Regulations), tenders must also be received through the Procurement Portal and should not be paper based.
- 16.2 Any tender received after the time and date specified in the ITT shall be rejected and shall not be considered under any circumstances.
- 16.3 Where the relevant Head of Service determines that a tendering process should be paper based the following tender receipt procedure shall be followed:
- (a) Every ITT shall contain a paragraph that makes it clear that no tender will be accepted unless:
 - (i) it is enclosed in a plain sealed envelope which shall bear the word "Tender" – followed by the subject to which it relates; and
 - (ii) the envelope does not include any other name or mark which is capable of identifying the sender.
 - (b) Tenders received and accepted by the Council shall be kept in the custody of the Senior Solicitor and Monitoring Officer until the time and date specified for their opening.
 - (c) Where a Tender is received after the specified deadline, the time of receipt will be recorded and, in addition, the tender envelope shall be stamped as 'Late'. Once all other tenders to which the contract relates have been opened the late tenders will be opened and stamped as 'Late'. The appropriate Officer can then inform the late tenderer that its tender was received after the deadline and therefore was not considered.

17. Opening of tenders

- 17.1 Tenders to be opened via the Procurement Portal shall be opened by a Verifying Officer at one time and only in accordance with the requirements of the Procurement Portal.
- 17.2 Paper based tenders shall be opened at one time and only in the presence of:
- (a) one Member; and
 - (b) one person from the Member Services team (or such other team as the Head of Paid Service may otherwise direct); and
 - (c) one of the following:

NDDC CONSTITUTION

Part 4

- (i) the project leader of the project to which the contract relates; or
- (ii) the Head of Service/Service Manager with responsibility for the function to which the contract relates; or
- (iii) any other Officer nominated by either of them to perform such a role.

17.3 Details of any paper based tenders received, including the name of the organisation submitting the tender and the amount of the bid, shall be recorded in a register kept by the Member Services team.

18. Evaluation of tenders

18.1 All tenders, whether subject to the Regulations or otherwise, will be evaluated in accordance with the evaluation criteria set out in the ITT and upon no other basis whatsoever.

18.2 For each procurement subject to the Regulations, or where the value of the contract to be awarded exceeds the Tendering Threshold, the project leader or the Head of Service/Business Unit Manager will form an evaluation panel with responsibility for evaluating the tenders in accordance with paragraph 18.1.

18.3 All contracts, except where the lowest price was predetermined to be the appropriate criteria in the ITT (procurements with a value beneath the relevant financial threshold stipulated by the Regulations only), will be awarded on the basis of the offer that represents the most economically advantageous for the Council as determined in the ITT.

18.4 An Officer shall require tenderers to explain the price or costs proposed in their tender where such a tender appears to be abnormally low in relation to the works, supplies or services being procured.

18.5 Prior to the award of any contract due diligence will be carried out to ensure that the tenderer has the experience and/or financial means to perform the contract. For the sake of clarity, this includes contracts for the provision of advice or consultancy services.

19. Award of contract

19.1 When a contract is awarded or a Framework Agreement is concluded pursuant to a tendering process under paragraphs 13 or 15 then all tenderers must be sent a notice simultaneously (via the Procurement Portal

NDDC CONSTITUTION

Part 4

except where the tenders were paper based) notifying them of the Council's decision to award and specifying:

- (a) the criteria for the award of the contract;
- (b) (or where the contract or Framework Agreement was concluded pursuant to a tendering process under paragraph 13, offering by way of a separate debrief) the reasons for the decision, including a brief summary of:
 - (i) (for a successful tenderer) the characteristics and relative advantages of the successful tender; or
 - (ii) (for an unsuccessful tenderer) the reasons why the tenderer was unsuccessful;
- (c) the score (if any) obtained by:
 - (i) the tenderer which is to receive the notice; and
 - (ii) the tenderer to be awarded the contract or to become a party to the Framework Agreement;
- (e) the name of the tenderer to be awarded the contract or to become a party to the framework agreement; and
- (f) a statement of when the Council expects to enter into the contract or conclude the framework agreement.

19.2 When a contract is awarded or a Framework Agreement concluded pursuant to the procurement procedure in paragraph 15 any additional requirements as to contract award set out in the Regulations must also be complied with including:

- (a) that the notice set out in paragraph 19.1 must provide all additional information required by the Regulations including setting out the applicable Standstill Period; and
- (b) publishing a contract award notice compliant with the requirements of the Regulations on the FTS not later than 30 days following the award of the contract or conclusion of the Framework Agreement.

19.3 Where the Regulations require that a Standstill Period is observed by the Council, the Officer must ensure that the Council does not enter into a contract with its preferred supplier until the applicable Standstill Period has expired.

19.4 Letters of intent must only be used in exceptional circumstances and after consultation with, and the approval of, the Senior Solicitor and Monitoring Officer.

PART 4 Collaborative procurement

20. Collaborative procurement

20.1 The Council may, following consultation with and approval of the Senior Solicitor and Monitoring Officer, procure goods, services or works from or through a Central Purchasing Body.

20.2 The Council shall be deemed to have complied with the Regulations and UK procurement legislation to the extent that the Central Purchasing Body has itself complied.

20.3 The Officer must ensure that the Council is clearly identified in the call for competition by the Central Purchasing Body and may only award a contract to the supplier(s) appointed by the Central Purchasing Body and in accordance with the terms of the multi-purchaser arrangement.

20.4 Procurement through a Central Purchasing Body may include one or more of the following multi-purchaser structures:

- (a) Framework Agreements: subject to the provisions of the Framework Agreement, call-off contracts can be awarded:
 - (i) directly to the supplier able to fulfil the order most efficiently (whether in terms of price, timing, scale or some other fact that is pre-determined by the Framework Agreement), if this can be established by applying the terms set out in the Framework Agreement; or
 - (ii) following a mini-competition among those suppliers on the framework. The use of mini-competitions is required when:
 - (A) not all the terms of the proposed contract are laid down in the Framework Agreement; or
 - (B) it is not possible to select a supplier from the information made available when the Framework Agreement was awarded;
- (b) contract permitting further direct contracts with the Supplier: the Council will be bound by the terms agreed between the Central Purchasing Body and the supplier and the precise scope of the arrangement the Council may enter into with the supplier must be in compliance with that set out in the Central Purchasing Body's contract;
- (c) contracting with the Central Purchasing Body as prime contractor: the Council will only deal with the supplier as a sub-contractor of

NDDC CONSTITUTION

Part 4

the Central Purchasing Body and the Council must enter into an agreement with the Central Purchasing Body detailing the basis of their arrangement; and

- (d) Dynamic Purchasing Systems: the Officer must issue an ITT, provide adequate time for responses and award a contract in accordance with the Dynamic Purchasing System established by the Central Purchasing Body.

NDDC CONSTITUTION

Part 4

PART 5 Contracts

21. Contract terms generally

21.1 Every contract the Council enters into shall be in writing.

21.2 Where a contract requires execution it shall be executed in accordance with Article 12 of this Constitution.

22. Terms and conditions of contracts of a value beneath the financial threshold provided in the Regulations

22.1 Subject to paragraph 22.2 below, where a contract is reasonably believed to be of a value beneath the relevant threshold set out in the Regulations then the Council's standard terms and conditions shall apply to that contract to the exclusion of any supplier terms and conditions that are provided in soft or hard copy. If supplier terms and conditions are provided they must be rejected and the rejection should be evidenced in writing.

22.2 Paragraph 22.1 shall not apply where:

- (a) an ITT, with content approved by the Senior Solicitor and Monitoring Officer, identifies alternative terms and conditions;
- (b) a Framework Agreement or Dynamic Purchasing System is being procured;
- (c) the contract for services is an IT contract;
- (d) the contract is for works;
- (e) the contract is being procured from a Framework Agreement or from a Central Purchasing Body in accordance with paragraph 20;
- (f) the relevant Head of Service and/or the Senior Solicitor and Monitoring Officer deems that the Council's standard terms and conditions are not appropriate and/or that other terms and conditions are preferable, provided that a written record is kept of this reasoning, to remain on the relevant file of the officer undertaking the procurement; provided such alternative terms and conditions are agreed with the Senior Solicitor and Monitoring Officer in advance of being entered into.

23 Terms and conditions of contracts of a value in excess of the relevant financial threshold provided by the Regulations

23.1 Contracts and Framework Agreements must be entered into on the terms and conditions in the form provided with the ITT and must set out any provisions required for inclusion by the Regulations.

Jan 2024

NDDC CONSTITUTION

Part 4

23.2 Any exception to the requirement set out in paragraph 23.1 must be approved by the Senior Solicitor and Monitoring Officer.

24. Changes to contracts/Framework Agreements

24.1 A contract or Framework Agreement may only be varied or changed without re- advertisement if an Officer can show, to the satisfaction of:

- (i) the Senior Solicitor & Monitoring Officer; or
- (ii) the Head of Paid Service, or the Chief Financial Officer or any Head of Service as defined by paragraph 4.1 of Part 3 of this Constitution (in each case in consultation with the Senior Solicitor & Monitoring Officer)

that (having regard, where relevant, to any additional requirements set out in the Regulations):

- (a) the change is provided for in the contract/Framework Agreement in clear, precise and unequivocal review clauses;
- (b) the change:
 - (i) requires additional works, services or supplies that have become necessary and where a change of supplier would not be practicable (for economic, technical or interoperability reasons) or involve substantial inconvenience/duplication of costs; and/or
 - (ii) is unforeseeable by the Officer, acting diligently, provided these changes do not affect the nature of the contract/Framework Agreement;

and the value of such a change does not exceed 50% of the original contract price. Where such a change has been made to a contract procured pursuant to paragraph 15 the change must be in accordance with the Regulations and the appropriate notice must be published on the FTS;

- (c) corporate changes have occurred in the supplier linked to merger, takeover or insolvency provided:
 - (i) the new supplier complies with any pre-qualification criteria assessed in the procurement; and
 - (ii) the change in supplier does not require any other substantial amendments to the contract/Framework Agreement;
- (d) the modification to the original contract or Framework Agreement is not substantial, that is it:
 - (i) is not a modification which renders the contract/Framework Agreement materially different in character from the one concluded;

NDDC CONSTITUTION

Part 4

- (ii) would not have resulted in a different outcome in the procurement;
- (iii) does not shift the economic balance in favour of the supplier;
- (iv) does not extend the scope of the contract considerably; or
- (v) put in place a new contractor other than where this is allowed pursuant to paragraph 24.1(c); and/or
- (e) the value of the modification (or the cumulative modifications where there is more than one) is less than:
 - (i) the relevant procurement threshold provided by the Regulations; and
 - (ii) 10% of the initial contract value for services or supplies contracts or 15% of the initial contract value for works contracts;

provided also that the modification(s) do not alter the overall nature of the contract.

25. Register of contracts

25.1 In accordance with the Local Government Transparency Code 2014 (and any subsequent or similar statutory requirement) the Senior Solicitor and Monitoring Officer shall keep and maintain a register of all contracts awarded by the Council of a value in excess of £5,000 including at least the following detail:

- (a) reference number;
- (b) title of the agreement
- (c) the Council department responsible;
- (d) description of the goods, services or works being provided;
- (e) the name and details of the supplier;
- (f) the sum to be paid over the length of the contract or the estimated annual spending or budget for the contract;
- (g) Value Added Tax that cannot be recovered;
- (h) start, end and review dates;
- (i) whether or not the contract was the result of a RFQ or an ITT; and
- (j) whether or not the supplier is a small or medium sized enterprise and/or a voluntary or community sector organisation and where it is, the relevant registration number must be provided.

25.2 It shall be the responsibility of Officers to monitor their contracts and ensure that the Senior Solicitor and Monitoring Officer is provided with correct, up to date and appropriate information to allow full compliance with paragraph 25.1.