

# Perth & Kinross Council Contract Rules



Head of Legal and Governance Services

1/6/2017

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## SECTION 1: Background

### 1.1 Definitions

In these Contract Rules and the Procurement Toolkit, the following words and expressions have the following meanings:

**Authorised Officer:** The officer designated to be responsible for the procurement process and the contract all in terms of clause 2.1 (Authority to Contract).

**Agent:** Any external individual or organisation acting on behalf of the Council.

**Best Value:** The legal duty to secure continuous improvement in the performance of the Council's functions.

**Bidder:** A contractor, supplier, or tenderer who responds to an invitation to quote (ITQ) or to tender (ITT).

**Collaboration (also known as collaborative procurement):** The process of achieving value for money for the Scottish public sector through partnership working between buying organisations.

**Contract:** A legally enforceable agreement between two or more parties.

**Contract Manager:** Officer charged with management of the relationship with a contractor.

**Contractor:** Anyone with whom the Council has a contract is a contractor (including providers of services).

**Council:** Perth & Kinross Council.

**ESPD:** European Single Procurement Document which is a qualifying document used for all tenders above the value of £50,000. The ESPD (Scotland) replaces the standard Pre-Qualification Questionnaire (sPQQ).

**EU:** The European Union.

**Framework Agreement:** an agreement with suppliers to establish terms governing contracts that may be awarded during the life of the agreement. It is a general term for agreements that set out terms and conditions for making specific purchases (call-offs).

**In-house Provision:** The provision by existing service/services within the Council of the Procurement Officer's requirements.

**Most Economically Advantageous Tender (MEAT):** The best value for money proposal based on the optimum combination of price and quality, not simply price alone.

**Official Journal of European Union (OJEU):** The Official Journal of the European Union, which publishes all public sector tenders breaching the EU thresholds.

**OJEU Tender:** A formal sealed bid procurement process that must comply with the requirements of the Scottish Regulations.

**Prior Information Notice:** A notice sent to the Official Journal.

**Procurement:** The acquiring by purchase, lease or other legal means, the goods, works and services used by the Council to discharge its functions in an effective, efficient and economic manner.

**Procurement Journey:** The process set out by the Scottish Government to assist Scottish public sector organisations to meet legislative, statutory and policy objectives from procurement. This process has been adopted by Perth and Kinross Council.

**Procurement Toolkit:** A toolkit provided to give a step by step guide to navigate the Procurement Journey.

**Public Contracts Scotland:** This portal enables the Council to advertise all contracting opportunities, including those to be published in OJEU, which happens automatically.

**Scheme of Administration:** The approved scheme for the arrangement and discharge of functions by Perth and Kinross Council, its Committees and its Officials.

**Tayside Procurement Consortium (TPC):** A Central Procurement Team created by Angus, Dundee City, and Perth & Kinross Councils. The TPC Steering Group reviews all collaborative contracts.

**Tender:** An offer to supply goods or deliver services.

**Tenderer:** A contractor, supplier, or bidder who responds to an invitation to quote (ITQ) or to tender (ITT).

**Threshold:** The financial maximum or minimum which determines the relevant procurement route. Procurement procedures vary depending on the type and value of the contract. Financial thresholds can be found in the Procurement Toolkit.

**Value for Money:** The optimum combination of whole life costs and quality (or fitness for purpose) to meet the customer's requirements, and largely analogous with "most economically advantageous"

## 1.2 Introduction and Legal Overview

1.2.1 All tendering and contract arrangements and procedures shall comply, with:

- (a) the statutory duty to secure Best Value.
- (b) The European Union Public Procurement regime and associated UK/Scottish legislation.

1.2.2 These Rules are subject to the exemptions specified in Section 5 and they do not apply to any situation where the Council decides to fund external organisations other than by means of a transparent procurement process. The funding of an external organisation shall be undertaken in accordance with the Council's policy, Following the Public Pound Code ([attach hyperlink](#)) and the Following the Public Pound Toolkit.

## SECTION 2: Authority to contract

### 2.1 Authority to Contract

2.1.1 The following shall constitute authority to invite tenders and enter into contracts:-

- (a) The cost of the services, supplies or works is part of the approved budget and can be met from the approved budget.
- (b) The action is in accordance with the Scheme of Administration and Financial Regulations.

2.1.2 There must be statutory authority and Council authority before inviting a tender and entering into a contract. Each Service shall maintain a scheme of delegation of authority to enter into contracts within their Service.

The regulatory thresholds currently applicable to procurement are as follows:

#### Summary of thresholds from 18 April 2016 (net of VAT)

##### PROCUREMENT REFORM (SCOTLAND) ACT 2014

TYPE OF CONTRACT	THRESHOLD
Public contract (other than public works contract)	£50,000
Public works contract	£2,000,000

##### PUBLIC CONTRACTS (SCOTLAND) REGULATIONS 2015

	SUPPLIES	SERVICES	WORKS
Public sector contracting authorities (including Perth and Kinross Council)	£164,176 €209,000	£164,176 €209,000	£4,104,394 €5,225,000
Contracts subsidised by a contracting authority	N/A	£164,176 €209,000	£4,104,394 €5,225,000

Social and other specified services in schedule 3 (e.g. Social and specific care services)	N/A	£589,148 €750,000	
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**These thresholds will be reviewed and updated by 1 January 2018.**

To contract on behalf of the Council in respect of those contracts above the regulatory thresholds, officers must:

- (a) register on the National Advertising Portal - Public Contracts Scotland, and
- (b) invite bids or quotations through the Portal.

- 2.1.3 Only those officers who have completed appropriate training, accredited by the Corporate Procurement Team may invite tenders and enter into contracts on behalf of the Council.

## **2.2 Emergencies**

- 2.2.1 In the event of an emergency or unforeseen circumstance for which there is no pre-existing authority the procurement actions taken in response shall be reported to the appropriate Committee as soon as possible thereafter.

## **SECTION 3: Compliance and Conduct**

### **3.1 Appointment of Authorised Officer**

- 3.1.1 Directors must appoint an Authorised Officer who will be responsible for the procurement process and for ensuring the contract is carried out in accordance with the Service's requirements.

### **3.2 Conduct and Conflicts of Interest**

- 3.2.1 Officers must comply with the [Employee Code of Conduct](#) and the [Conflict of Interest Procedure](#) contained therein in all tender, contract and procurement processes.
- 3.2.2 A breach of these Contract Rules or the Corporate Procurement Strategy may undermine the validity of the contract and allow an unsuccessful bidder/ tenderer to challenge an award of contract or to seek damages. A breach of these Rules or the Strategy may therefore lead to disciplinary action.

## **SECTION 4: Responsibilities of Directors, Heads of Services & Officers**

### **4.1 Responsibilities of all officers**

- 4.1.1 Every authorised officer must ensure that all invitations to tender and contracts entered in to comply with the:-
- (a) [Scheme of Administration](#)
  - (b) [Council's Financial Regulations](#)
  - (c) [Corporate Procurement Strategy](#)
  - (d) Contract Rules

(e) [Procurement Toolkit](#)

- 4.1.2 To limit risk, no contract for the use, adoption, purchase, commissioning, lease or subscription of any ICT (information and communication technologies) hardware, software, or services shall be entered in to without the timely approval of The Head of Corporate IT and Revenues.
- 4.1.3 Auditable records of procurement and contracting activities shall be maintained in accordance with Council's [approved retention schedule](#). Further guidance may be obtained from the Council's Records Manager.

**4.2 Responsibilities of Directors and Heads of Service**

- 4.2.1 A report detailing all tenders over £5,000 in value accepted by each Service during the preceding 12 months is submitted annually to SP & R Committee. Each Head of Service shall verify and submit the information for their Service to the Corporate Procurement Team.
- 4.2.2 Each Head of Service shall provide verified information detailing its anticipated contracts over the next two financial years to the Corporate Procurement Team so that the Council can comply with its statutory duty to publish the contract delivery plan.
- 4.2.3 Each Head of Service shall ensure all relevant staff undertaking contracting activities have read, understood and are familiar with these Rules and the Procurement Toolkit or other guidance issued in respect of these Rules.
- 4.2.4 Each Head of Service shall take appropriate action immediately upon becoming aware of a breach of these Rules or non-compliance with the Procurement Toolkit.
- 4.2.5 In respect of the foregoing Heads of Service should notify or seek the approval of Directors of each Service where required.

**4.3 Responsibilities of Authorised Officers**

- 4.3.1 The Authorised Officer is responsible for all contracts they have tendered, let and managed on behalf of the Council and must comply with the following duties:
- 4.3.2 General
- (a) Ensure compliance with these Rules and the [Procurement Toolkit](#);
  - (b) Keep all commercial information confidential subject to any legal requirements;
  - (c) Where appropriate, conduct assessments as may be required e.g. Equality and Human Rights Impact Assessment; Privacy Impact Assessment or Strategic Environmental Assessment.
  - (d) Where a third party such as a consultant procures works, goods or services on the Council's behalf, the Authorised Officer must take steps to ensure that the third party acts in accordance with these Contract Rules.

(e) Thresholds

- In respect of small contracts for services, supplies or works below £5,000, tenders need not be invited. In respect of any contract where the costs of the services, supplies or works is above £5,000 but does not exceed £50,000 a minimum of three quotations must be sought
- For all contracts of £50,000 or above these Rules shall apply. All tenders of this value shall be developed in conjunction with the Corporate Procurement Team and approved prior to issue.

When a contract is to be procured the estimated value of the contracts must be aggregated to decide whether the threshold is reached.

**No officer shall disaggregate contracts to avoid the procurement process applicable to a higher threshold.**

**Best value must be demonstrated in all contracts.**

For all of the above thresholds guidance as set out in the Procurement Toolkit shall be followed.

#### 4.3.3 Pre Contract (Development Phase)

- (a) To prepare and approve where required by an appropriate Contract Strategy for each proposed purchase or contract;
- (b) To check whether there is any existing Council or other collaborative framework that can be used to achieve Best Value for the Council before undergoing a further competitive tender process;
- (c) To prepare, in consultation with the Corporate Procurement Team, appropriate contract and tender documents which clearly specify the scope, quality, quantity and terms and conditions of the works, goods or services;
- (d) To ensure that appropriate contract security (such as a performance bond) is specified and obtained where required or considered prudent;
- (e) To ensure that any evaluation panel is suitably informed to assess tenders;
- (f) To limit risk associated with the use, adoption, purchase, commissioning, lease or subscription of any ICT (information and communication technologies) hardware, software or services software officers are required to consult with Corporate IT Manager.

#### 4.3.4 Tender Phase

- (a) To ensure contracts are awarded and any appropriate contract security documents are signed before work, services or supply provision commences;
- (b) To make appropriate arrangements for the opening of tenders and their secure retention so as to protect the integrity of the procurement process. Where tenders are received in paper form to ensure they are opened in the presence of an authorised officer together with a witness.



- (c) To prepare a Tender Report as outlined in the [Procurement Toolkit](#); submit this to their Head of Service for approval and thereafter to the Corporate Procurement Manager for information.

#### 4.3.5 Post–Award (Contract Management Phase)

- (a) To put in place arrangements for efficient contract and supplier management including the identification of a Contract Manager and management of benefits and performance, for the entire duration of the contract;
- (b) Completion of a contract award notice which must be undertaken within one month of contract award;
- (c) To ensure no supplier is requested by the Council to provide goods, services or works without first having a valid purchase order in place;
- (d) To enter all purchase order information onto the relevant Council financial system prior to the service or goods requested;
- (e) To retain a copy of the contract and keep proper records of all contracts and tenders, including minutes of tender evaluation panels and other meetings;
- (f) Take all appropriate measures to prevent, identify and remedy conflicts of interest and include measures to combat fraud through the life of the contract.

## SECTION 5: Exemptions from Contract Rules

### 5.1 Exemptions from Contract Rules

#### 5.1.1 These Rules do not apply to:-

- (a) Contracts of employment;
- (b) The acquisition, disposal, lease or rental of land, existing buildings, other immovable property, any developer obligation pursuant to a legal agreement under section 75 of the Town & Country Planning (Scotland) Act 1997 or any other interest in land;
- (c) The arrangement of works, goods or services to be delivered via In-House Service Provision or Arm's Length External Organisation (ALEO);
- (d) Any contract awarded to Tayside Contracts outwith a bidding process.

#### 5.1.2 These Rules may not apply to:-

- (a) Contracts which are exempt by virtue of the Public Contracts (Scotland) Regulations 2015 including:
  - (i) service contracts such as specific legal and financial services
  - (ii) contracts awarded on the basis of an exclusive right such as; Tayside Joint Valuation Board.
  - (iii) contracts awarded between entities within the public sector.
- (b) An immediate need is created by a sudden, unforeseen, real and demonstrable emergency requiring immediate action;

- (c) A contract for the continuing use of an existing contractor/supplier in order to maintain continuity of supply or site experience, where the justification has been submitted to the Corporate Procurement Manager;
- (d) The purchase of goods or materials, the execution of works or supply of services for which the authorised officer can demonstrate that no genuine competition can be obtained;
- (e) Purchase of works, goods or services from a supplier under an acknowledged public sector agreement or a collaborative procurement agreement including Tayside Procurement Consortium
- (f) The purchase of social and specific support services but only where approved by the Chief Social Worker or Director of Education and required so the Council meets its statutory obligations.

## **5.2 Application for exemption**

- 5.2.1 If it is considered that any matter specified in 5.1.2 (a) to (f) applies, an application for an exemption should be made in writing to the Corporate Procurement Manager at the earliest practicable opportunity and provide the reason for the exemption.
- 5.2.2 Authorisation for an exemption from these Rules will be granted, where appropriate, by the Head of Legal and Governance Services in consultation with Corporate Procurement Manager.

## **SECTION 6: Contract Amendments**

### **6.1 Variations to an existing or proposed contract**

- 6.1.1 Variations in contract terms can be of minor or major significance. Such variations may relate to the Council's Standard Terms and Conditions or a contract procured via a Framework or otherwise, and may include assignments, changes to the contract sum etc. Any such variations will require to take account of whether they are consistent with a fair, reasonable and transparent procurement process.
- 6.1.2 If an authorised officer or contractor wishes to vary conditions of a contract, the Authorised Officer shall consult with Legal Services and notify the Corporate Procurement Manager detailing the proposed variations.
- 6.1.3 In the event of a contract variation being approved it may be necessary to update the Contract Register; this update should be made in writing using the [Contract Register Amendment Form](#) where appropriate.

### **6.2 Amendments to insurance requirements in contract**

- 6.2.1 If any proposed variations relate to insurance levels, then the Authorised Officer must also consult with the Council's Insurance Team, Legal Services and the Corporate Procurement Team

## **SECTION 7: Reporting of Breaches or suspected breaches**

- 7.1 Any breach or suspected breach of these Contract Rules and/or Corporate Procurement Strategy must be reported immediately to the Head of Service who thereafter should notify the Corporate Procurement Manager.

## **SECTION 8: Legal Framework**

### **8.1 Relevant legislative provisions**

Every contract must comply with all relevant legislation. Some of the legislative provisions which commonly affect contract development are listed below. For the avoidance of doubt, this list is not exhaustive and authorised officers are expected to familiarise themselves with the legislation relevant to their own particular requirements.

#### **8.1.1 Health and Safety at Work Act and Regulations**

Authorised officers should ensure contracts are awarded in accordance with the Council's statutory health & safety duties which are described in detail in the [Corporate Occupational Health & Safety Policy](#).

#### **8.1.2 TUPE the "Transfer of Undertakings (Protection of Employment)**

The TUPE rules protect employees' rights when the organisation or service they work for transfers to a new employer. It is important to be aware of the implications of TUPE when contracting e.g. some bidders may qualify their tenders in respect of any liabilities arising under TUPE. Please refer to the following [TUPE Guidance](#) for further information.

#### **8.1.3 State Aid**

State aid arises where public funds are used resulting in a distortion in competition. The provision of state aid without approval from the European Commission is unlawful. If a contract is proposed in which State Aid may arise, officer(s) should seek guidance from the Corporate Procurement Manager and/or the Head of Legal and Governance Services.

#### **8.1.4 Bribery**

Should an Officer become aware of any potential contravention of the Bribery Act 2010, they should report their concerns to their Head of Service. The Head of Service shall notify the Chief Internal Auditor of their concerns and, if appropriate, the Monitoring Officer.

#### **8.1.5 Employment status of the contractor**

Officers should be aware of the legislative requirements set out by HMRC (Her Majesty's Revenue and Customs) in order to correctly assess the employment status of a contractor or worker engaged through the procurement toolkit. These requirements are often referred to as Intermediaries Regulations or IR35. Guidance on the IR35 process to follow can be found on Eric.