

## REGULATION 15: CONTRACTS AND PROCUREMENT PROCEDURES

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**Procurement relates to the purchase or acquisition of any goods, works or services.**

**A contract relates to an agreement between two parties and consists of an offer, acceptance and consideration. Under the FBC constitution contracts entered into by means of a Purchase Order are governed by these Financial Regulations, whereas those where additional conditions are used to meet the requirements of the Council, are governed primarily by Contract Procedure Rules (CSO). Aspects of the financial control of contracts are also governed by these regulations.**

**It should be noted that contracts cannot be made and let by individual members of the council and there are legal controls over who can *attest* (witness and sign the seal) or sign contracts as laid out in the Councils Standing Orders for Meetings (number 60). Contracts made *under seal* offer the council extra protection in terms of problems occurring after a contract has been completed. Further guidance on when a contract under seal is required can be obtained from Legal Services.**

**Advice is always available from the Council's legal section in relation to the form of contracts and agreements to use.**

### 15.1 OVERVIEW

- 15.1.1 **Need for Procurement:** Only those goods and services shall be procured which are necessary for the provision of approved Council Services. All procurement should be in accordance with the procurement policies and [Strategy](#) set for the Council.
- 15.1.2 **Budgetary Provision:** Procurement can only be entered into where there is sufficient budgetary provision for the total of the purchase. Any expenditure as part of the Council's Capital programme must be controlled in accordance with [Financial Regulation 9](#).
- 15.1.3 **Contract Procedure Rules:** The Council's [Contract Procedure Rules](#) contain provisions relating to any purchase **over £20,000**. Managers responsible for placing orders or arranging contracts should familiarise themselves with the detail of these provisions.
- 15.1.4 **Consultant Compliance with Financial Regulations:** It shall be a condition of the engagement of the services of any consultant who is to be responsible to the Council for the supervision of a contract on its behalf, that in relation to that contract they will comply with these Regulations and Contract Procedure Rules as though they were an officer of the Council.

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- 15.1.5 **External Arrangements:** [Financial Regulation 21](#) must also be followed in relation to procurement involving external partners.
- 15.1.6 If procurement is being made on behalf of a partnership or other body which will be refunding the cost then these regulations should still be followed to avoid suspicion, unless an agreement exists waiving this need. Authorisation of expenditure or signing of agreements on behalf of the partnership or other body should be in accordance with [Financial Regulation 4.1.7](#).
- 15.1.7 **Gifts and Hospitality:** All members and employees must follow the Council's [Anti-Fraud and Corruption Policy](#) and [Financial Regulation Support Document 17](#) on 'acceptance of gifts and hospitality' in relation to any procurement undertaken.
- 15.1.8 **Member and Employee Interests:** Any member or employee, who has an interest in a contract or supplier, must follow the Council's [Anti-Fraud and Corruption Policy](#) and [Financial Regulation Support Document 19](#) on 'registers of interests' in relation to any procurement undertaken.
- 15.1.9 These rules include the following:
- Under no circumstances can a purchase or contract be awarded or managed by an employee or member who has other interests in the arrangement.
  - Under no circumstances can previous employees or members of the council be employed as consultants without alternative quotations being sought.
- 15.1.10 **Right of Access to Documentation:** Agreements with persons other than employees contracted to supervise and manage contracts on the Council's behalf shall provide that all specified documents relating to the contract will be delivered for inspection by the Council, if required. On completion of the contract they shall transmit all such records to an appropriate Council manager.
- 15.1.11 **Confidentiality:** All tender documents are confidential and therefore should be kept securely and details only revealed in accordance with Contract Procedure Rules.

## 15.2 PURCHASING CHANNELS

- 15.2.1 **Central Purchasing:** The procurement of goods and services shall conform to any rules that may be in force regarding central purchasing, corporate wide contracts and/or standardisation of

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supplies and services, as published on the Procurement intranet pages.

- 15.2.2 **Auctions:** Procurement through auctions is only permissible in exceptional circumstances. In these cases, the Council's policy and procedures for auctions as set out in [Financial Regulations Support Document 5](#) must be followed.

### 15.3 MARKET TESTING

- 15.3.1. **Price Comparisons:** It is essential that the Council obtains optimum value for money from any purchases. This can only be obtained by testing the prices of several suppliers, by checking price lists, catalogues, trade journals, advertising and obtaining verbal and written quotes.

There are several buying consortia (e.g. central buying agency) in use by the council which should also be checked to achieve price comparisons.

- 15.3.2. **Thresholds:** Three comparative prices must be obtained and documented for all purchases over **£500** and under **£20,000**. These thresholds relate to the total value of the purchase or contract (to which the Council is being committed) excluding VAT, or aggregate spending with a supplier for a year.

Purchases under £500 are exempt from the mandatory requirement for price checks but competitive prices and products should still be sought wherever possible.

- 15.3.3. **Contract Procedure Rules:** For large value purchases over **£20,000** procedures as stipulated in Contract Procedure Rules should be followed.

In some circumstances it may be appropriate for tendering procedures to be used under the **£20,000** limit. In these cases the tendering procedures stipulated in Contract Procedure Rules should still be followed.

- 15.3.4. **Artificial Splitting:** These limits must not be avoided by means of splitting the value of the goods, works or services to be received from one supplier. However, in certain circumstances it may be appropriate to split an order between suppliers to obtain the optimum value for money for the Council.
- 15.3.5. **Evidence of Quotes and Evaluation:** Documentary evidence must be maintained of price comparisons undertaken for at least 1 year after

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the purchase or end of the contract, or any period stipulated in the Council's Information Disposal Schedule whichever is the longest.

**15.3.6. Variations to Requirements for Price Comparisons:** The following exemptions from the price comparisons rule are allowed:

- a) Long Term Agreements: Purchases where we have entered into an agreement for more than one year are exempt, including contracts accessible through the Hampshire Market Place. However, long term agreements should not normally exceed **3 years** before their value is reassessed.
- b) On-going supply of parts and materials: Where a single supplier is used for a large quantity of small purchases throughout the year, documented price checking is only required on a 'basket of goods' basis, at least every year. Where the annual value of the use of the supplier exceeds **£50,000** for the year then Contract Procedure Rules should be followed.
- c) Life-Span of Quotations: Subsequent price checks are not needed for a similar purchase within **12 months**, unless the market is volatile for the type of purchase (e.g. fuel), the preferred supplier wishes to increase their charge, or the cost exceeds **£20,000**.
- d) Council Own Tenders: Documented price checking is not required to support tender submissions being prepared by Council services. However, if the contract is awarded in-house then procurement by the supplying service must then comply with these regulations.
- e) Contract Procedure Rules Exemptions: Price comparisons are not required to be sought in the following circumstances:
  - Orders to be placed through an approved framework agreement to which this Council is a party;
  - Orders placed through a central purchasing body within the meaning of the Public Contracts Regulations 2006;
  - Employment Contracts
  - Contracts for the disposal or acquisition of an interest in land
  - Grants to external organisations
  - The Contract Procedure Rules of another authority are taking precedence for collaborative procurement.
- f) Waivers: Where a purchase has an estimated value below the Contract Procedure Rules threshold, a waiver of the provisions of Financial Regulation 15 may be agreed by the Statutory Chief Finance Officer in consultation with the Monitoring Officer. A record must be kept of the reasons for the waiver and the approval.
- g) Emergency purchases: Emergency purchases are where to obtain price comparisons will result in a delay sufficient to cause danger of potential damage to property or life, or the potential damage to the running of any of the Authority's functions or services.

Where the value is below the Contract Procedure Rules threshold then this waiver must be agreed by the respective Director or Chief Officer,

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or in their absence another Director or Chief Officer, and a record kept of the reasons for the waiver.

As soon as practical normal procurement procedures must be followed.

- 15.3.7. **Limited Suppliers:** Where there are limited suppliers of the required quality available for goods and services (e.g. use of specialists), less than the required number of price comparisons can be sought, on agreement with the Monitoring Officer or the appropriate Director/Chief Officer that a limited supply exists.
- 15.3.8. **Single Suppliers:** In the cases of only a single supplier being available, or to ensure continuity of a specialist supply, attempts should be made to demonstrate that use of the supplier is still offering the Council value for money (e.g. comparison to previous years, other local authorities etc.)
- 15.3.9. **Consultants or Specialists:** Consultants or specialists must be requested to prepare a new quote or tender for any additional work requested.

Where this can not be seen as a variation to the original contract (in which case the [variation rules](#) below apply) then the quote or tender received must be market tested in the same way as any other purchase. However, as much importance can be given in the evaluation process to continuity as well as price.

## 15.4 EVALUATION OF QUOTES

- 15.4.1. **Handling Quotes:** Best practice in relation to the receipt of written quotes is to treat them as tenders such that they are invited at the same time and remain sealed until opened by 2 officers.
- 15.4.2. **Required Number of Quotes Not Achieved:** Every effort should be made to achieve the required number of quotes or tenders by widening the number of suppliers included at the start of the exercise.

However, if this fails to result in the required number of quotes a note should be made of what efforts were made, any reasons for failure (e.g. supplier disinterest) and any improvements that are possible for future procurement exercises.

- 15.4.3. **Lowest Quotes:** In the interests of achieving optimum value for money it is not always necessary to accept the lowest quotation. There must, however, be good reasons for not doing so and officers must document why a decision to do so was made. In particular the 'whole life' cost of procurement will be more important than the initial purchase cost.

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- 15.4.4. **Quotes Received over Threshold:** Where an estimated cost has only required the Financial Regulation procedure to be followed, but the sums quoted are found to exceed the Contract Procedure Rule limits (but not £100,000) then the purchase can proceed, providing enough budget provision is available, and on agreement with the relevant Director/Chief Officer and the Monitoring Officer. A report should also still be made to the Executive, or relevant committee.

## 15.5 FORM OF CONTRACT

- 15.5.1. **Form of Contract:** Only forms of contract can be used which meet the approval of the relevant Director.
- 15.5.2. **Form of Contract for Goods:** Generally purchase orders (POPs) should be used for the procurement of goods under **£50,000** in accordance with [Financial Regulation 16](#). Over this limit they can still be used with the agreement of the Monitoring Officer.
- 15.5.3. **Form of Contract for Works or Services:** Any works or service procurement over **£20,000** must be supported by an agreement or contract. Procurement of services under this value may also require specific contract terms and conditions, especially where a retention sum is involved. Legal advice should be sought to confirm whether the POPs terms and conditions are appropriate for a service.
- 15.5.4. **Authorisation of Orders and Contracts:** Orders, agreements and contracts can only be authorised by an employee whose level of delegated authority is above the total net value of the order or contract.
- 15.5.5. **Authorisation List:** A list of officers authorised to authorise orders, agreements or contracts on behalf of the Council shall be given to the Director of Finance and Resources together with their specimen signatures and any limits imposed, in accordance with [Financial Regulation 4](#).
- 15.5.6. **Signing Contracts:** Contracts above **£5,000** can only be signed by a Director or Chief Officer. Where the value exceeds **£50,000** they must be signed and/or sealed in accordance with Contract Procedure Rule 15.

## 15.6 PAYMENTS ON CONTRACTS

- 15.6.1. **Contract Payment Register:** Where contracts provide for a total contract sum to be paid in instalments, the Director of Finance and Resources shall arrange for the keeping of a Register of Contract Payments showing the state of account between the Council and the Contractor.

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The register should detail the following:

- a) the contract title
- b) the total tendered sum
- c) the Committee minute reference (where applicable)
- d) Contractor's name and address and payment address if different
- e) the sum effect of any variation orders agreed
- f) retention sum
- g) each payment made including date paid, the certificate number, sum paid and VAT
- h) cumulative total and VAT paid
- i) any fees/liquidated damages applied, loss or expense claims and the like.

15.6.2. **Contract Payment Certificates:** Payments made in accordance with contract instalment conditions shall be made only on an official Council certificate approved by the Statutory Chief Finance Officer. These shall be issued by the officer(s) named in the contract or, in the case where outside professional services are contracted, shall be issued by the employer.

15.6.3. **Form of Variation Orders:** Each variation to the original contract shall be priced or estimated and authorised and a record kept. Variations to appropriate contracts (e.g. JCT contracts) should be on an official, serially numbered document.

15.6.4. **Issue of Variation Orders:** Every variation shall be authorised in writing at the time, or within a day of an instruction being issued, by the officer named in the contract, or by outside professional services engaged so to do.

15.6.5. **Threshold for Variations:** Any variation order likely to cause the contract sum to exceed the tender price by more than **10% or £20,000**, whichever is the lesser (unless less than £5,000), must be reported to the next meeting of the Executive, by the responsible officer or Director or professional engaged on the contract, where appropriate.

Where the contract relates to a capital scheme it must also be referred to the Council.

15.6.6. **Overspend on Contracts:** Where the settled amount of a contract exceeds the tender price by more than **10% or £20,000** whichever is the lesser (unless less than £5,000) the matter should be reported to the Executive at the earliest possible time, with a reconciliation to the tender sum.

Where the contract relates to a capital scheme it must also be referred to the Council.

15.6.7. **Contractor's Claims:** Financial claims from contractors in respect of matters not clearly within the terms of an existing contract shall be

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referred to the Nominated Chief Officer with responsibility for Legal Administration for consideration of the Council's legal liability and the Statutory Chief Finance Officer to assess the extent of any financial liability.

The Statutory Chief Finance Officer must also be notified immediately of all claims for extensions of time and loss and expense, to ensure they may prepare a financial appraisal before a settlement is reached, and make any necessary adjustments to the accounts.

- 15.6.8. **Contract Examination:** At any stage of a contract, either before, during or after, the Statutory Chief Finance Officer or their representative shall, to the extent they consider necessary, examine contracts and be entitled to make all such enquiries and receive such information and explanation as they may require in order to confirm the accuracy of the records.

**Other Points of Reference** (underline denotes a hyperlink is available)

[Procurement Strategy](#)

[Contract Procedure Rules](#)

[Procurement Resource Centre \(Guide\)](#)

[ICT Procurement Handbook](#)

[CSO Support Document on Employment of Consultants](#)

[Constitution Procedure Rules With Respect to meetings Part 5 General matters - 60 Sealing of contracts](#)

[Financial Regulation 4: Authorisation Limits](#)

[Financial Regulation 8: Revenue Budgets and Budgetary Control](#)

[Financial Regulation 9: Capital Budgets](#)

[Financial Regulation 10:4: Fraud and Corruption](#)

[Financial Regulation 16: Ordering and Paying for Goods and Services](#)

[Financial Regulation 20.4: Tax \(CIS\)](#)

[Financial Regulation 21: External Arrangements](#)

[Financial Regulation Support Document 5: Auction Procedures](#)

[Financial Regulation Support Document 17: Gifts and Hospitality](#)

[Financial Regulation Support Document 18: Propriety and Probity](#)

[Financial Regulation Support Document 19: Registers of Interests](#)

[Financial Regulation Support Document 22: Guidance on Insurance Types and Levels required by External Contractors.](#)

[Financial Regulation Support Document 6c-Procurement Guiding Principles](#)