

# **HERTSMERE BOROUGH COUNCIL**

## **CONTRACT PROCEDURE RULES**

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## TABLE OF CONTENTS

1.	PURPOSE AND SCOPE OF CONTRACT PROCEDURE RULES .....	3
2.	PRINCIPLES OF GOOD PROCUREMENT .....	3
3.	HEALTH AND SAFETY AND EQUAL OPPORTUNITIES.....	3
4.	TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 (TUPE).....	4
5.	ELECTRONIC PROCUREMENT .....	5
6.	EXPENDITURE AND AUTHORISATION THRESHOLDS .....	5
7.	INVITATION TO TENDER LIST .....	8
8.	SPECIFICATION .....	8
9.	EXCEPTIONS.....	8
11.	PROCUREMENT WITH OTHERS / COLLABORATIVE PROCUREMENT.	9
12.	TENDER EVALUATION CRITERIA .....	9
13.	INVITATION TO TENDER/QUOTATIONS.....	10
14.	SUBMISSION, RECEIPT AND OPENING OF TENDERS .....	11
15.	POST TENDER PROCEDURES.....	11
16.	EVALUATION AND AWARD OF CONTRACT .....	11
17.	CONTRACT FORMALITIES.....	12
18.	SIGNATURE .....	13
19.	SEALING .....	13
20.	BONDS AND PARENT COMPANY GUARANTEES .....	13
21.	PREVENTION OF CORRUPTION .....	14
22.	DECLARATION OF INTERESTS .....	15
23.	POST CONTRACT MONITORING AND EVALUATION .....	15
24.	RULES OF MEMBERS IN PROCUREMENT.....	17
25.	FAILURE TO COMPLY WITH THE CONTRACTUAL PROCEDURE RULES .....	17

## **CONTRACT PROCEDURE RULES**

### **1. PURPOSE AND SCOPE OF CONTRACT PROCEDURE RULES**

The purpose of these Procedure Rules is to ensure that any procurement process for services, works or goods achieves best value and is transparent, open and fair making it possible for all decisions to be audited satisfactorily. They must be followed every time the Council wishes to enter into a contract for services, works or goods.

### **2. PRINICIPLES OF GOOD PROCUREMENT**

The principles of good procurement are:

- 2.1 Achieving value for money and compliance with these Contract Procedure Rules and the Public Contracts Regulations 2015 (hereinafter referred to as PCR2015)
- 2.2 Balancing the needs of the Council and the potential supplier. The procurement process should give the Council sufficient information to form a sound view of a potential supplier's competence without placing unreasonable burdens on them.
- 2.3 Potential suppliers, should:
  - Understand from the outset what categories of information and general standards and responsibilities will be expected of them.
  - Be provided with adequate, accurate and timely information at all relevant stages of the procurement process.
  - Be subject to the same requirements and treated equally throughout the procurement process.
  - Be made fully aware of the basis for evaluation of tenders.
- 2.4 All decisions should be based on objective measures that are justifiable in terms of the matters specified under the contract.
- 2.5 The Procurement Handbook gives further details on the processes behind delivering principles.

### **3. HEALTH AND SAFETY AND EQUAL OPPORTUNITIES**

- 3.1 The Council must be satisfied in any procurement process that potential suppliers have satisfactory systems for managing health and safety in relation to the matters concerned. Details of their health and safety policy relevant to the performance of the contract must be obtained to ensure it provides satisfactory systems for managing health and safety. Monitoring

arrangements must be in place post contract award to ensure that health and safety matters are being properly addressed.

Potential suppliers are also asked to acknowledge that they have seen and understand the terms of the Council's health and safety policy in relation to the matters concerned.

- 3.2 Suppliers of services which may involve contact with the users of the services, or the wider community, should be asked to demonstrate specific attributes with regard to fair treatment and equal opportunities. All potential suppliers must be required to comply with the Council's equalities policy.

#### 4. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 (TUPE)

- 4.1 TUPE should be presumed to apply in any procurement process involving the contracting out of a service area with a discrete budget and staff assigned to it. The exception to this is if there are genuine exceptional reasons for TUPE not to apply. These could be where:

- A contract is for the provision of both goods and services, but the provision of services is ancillary in purpose to the provision of the goods.
- The matter being contracted is essentially new or a one off project.
- Services or goods are essentially a commodity bought "off the shelf" and no grouping of staff is specifically and permanently assigned to a common task.
- The features of the service or function subject to the contracting exercise are significantly different from the features of the function previously performed within the Council, or by an existing supplier such as a function to be delivered electronically and in a way that requires radically different skills, experience and equipment.

- 4.2 Invitations to Tender should state that staff will transfer pursuant to TUPE and sufficient information should be provided to enable potential suppliers to cost the effect of TUPE applying and staff transferring to them. Human Resources will deal with the provision of the appropriate information (For outsourced contracts). Pensions provided to transferred staff must be certified by the Government Actuary as "broadly comparable" with the Local Government Superannuation Scheme. There should also be an agreement with the new employer's pension scheme providing that staff will be able to transfer their accrued service credits into that scheme on a day-for-day, or equivalent, basis. Alternatively, if the new employee so wishes, transferred staff can continue to have access to the Local Government Superannuation Scheme. Advice on the applicability of TUPE and the clauses to be inserted in Invitations to Tender and contracts should be sought in the first instance from the Procurement Manager.

4.3 TUPE should also be presumed to apply to a procurement process when an external contract is to be re-let where there are staff involved. Invitations to Tender should state that staff are to transfer pursuant to TUPE and information relating to pay, bonus payments, allowances, holiday entitlement and pension details should be obtained from the incumbent supplier to enable potential suppliers to cost the effect of staff transferring to them.

4.4 All contracts to which TUPE applies must contain specific clauses relating to the application of TUPE. These clauses can be obtained from the Procurement Manager.

5. ELECTRONIC PROCUREMENT

5.1 All procurements, with a value greater than £10,000 must be undertaken using the E Procurement portal. To ensure a fully auditable process, all correspondence during the tender process must be transmitted through this system.

5.2 It should be made clear in any invitation to quote / tender documents that any tender must be submitted through this system and that any tenders received in hard copy or by any other means (such as e-mail) will be rejected.

6. EXPENDITURE AND AUTHORISATION THRESHOLDS

6.1 All purchases are subject to the following procedure:-

<b>Estimated Value</b>	<b>Minimum No. of Quotations/ Tenders</b>	<b>Council Seal</b>	<b>Notes</b>	<b>Authorisation to award contract</b>
Under £10,000	(Obtain a minimum of one written quotation)	No	Although a formal procurement process does not need to be followed, value for money still needs to be demonstrated e.g. informal price comparison/obtain written quotation.	Departmental Manager
£10,000 - £74,999	3 quotations	No	<ul style="list-style-type: none"> <li>Unless a recognised trade or profession contract is to be used (i.e. JCT) then the Council's standard terms and conditions must be used. Legal Services must approve any deviation from these terms and conditions. Consideration should</li> </ul>	Head of Service

Estimated Value	Minimum No. of Quotations/ Tenders	Council Seal	Notes	Authorisation to award contract
			<p>also be given to the use of Liquidated Damages (a predetermined and realistic estimate of potential loss arising from default under a contract). If Liquidated Damages are not considered appropriate then the reason should be given on the contract file.</p> <ul style="list-style-type: none"> <li>• All contractors submitting a quotation must sign the Council's standard declaration of non collusion and form of tender</li> <li>• Officers should use the quotation proforma available on the Intranet</li> </ul>	
<p>£75,000 and over. *See note in 7.1 regarding Construction Contracts</p>	<p>Advertised on an Open basis</p>	<p>No</p>	<p>The Procurement Manager must manage the process. In addition to the above a financial appraisal of all tenderers should be undertaken as part of the procurement process. Consideration should also be given to whether a performance bond is appropriate and if the PCR2015 apply.</p>	<p>Director up to £100,000.00  Executive over £100,000.00</p>

N.B. – Estimated Value is described in 6.2 below.

6.1.1 Those Officers wishing to enter into contracts must use their best endeavours to achieve the minimum number of quotations/tenders referred to in the above table. If having done so it is not possible to achieve the minimum number of quotations/tenders a clear note must be placed on the contract file giving the reasons why the minimum number could not be achieved.

6.1.2 In situations where there is only one quotation or tender and one of the circumstances referred to in Procedure Rule 10 does not apply the formal agreement of the Procurement Manager must be obtained before any contact is entered into in respect to all contracts with an estimated value exceeding £10,000.

6.1.3 For contracts with a value of less than £20,000.00, Officers should invite quotations only from Local Suppliers (Suppliers based in the Borough of Hertsmere) wherever possible.

6.2 How to calculate the estimated value:

When a new supplier is to be used, or a new service / commodity is purchased then the following should be considered.

6.2.1 For Capital projects (without maintenance) it should be the Capital Budget approved for the purchase.

6.2.2 For Capital projects that include a contractual requirement for maintenance, it should be the cost of the capital budget plus the maintenance costs for the duration of the maintenance agreement (i.e. a capital purchase of £45,000, that includes a maintenance contract for 5 years estimated at £5,000 per annum has a total estimated value of £70,000

6.2.3 For revenue contracts the estimated value should be for either:

a) The estimated value of a one off purchase

b) For recurring requirements with that supplier the estimated value shall be either the value for the proposed contract length or If it is not known how long the arrangement will be in place then the estimated value should be 4 times the annual expected expenditure.

6.2.4 The estimated value must exclude Value Added Tax (VAT) but must include all other taxes and duties.

6.3 Where a Contractor is commissioned to undertake more than one order / contract for a specific department in any one financial year period, then the total amount spent with that supplier should not exceed £10,000 without conducting a competitive process in accordance with these Rules.

6.4 It is acknowledged that more than one department may utilise the same supplier, without knowledge of the expenditure of the other department. The procurement department will regularly assess the expenditure and should the expenditure on any one supplier exceed £10,000 (in a financial year), then those departments should conduct a joint procurement in accordance with these rules.

6.5 Investigatory phases- services are often commissioned where projects are at the investigatory (initial) stage as to project viability, pilots or design etc. Quite often extra resources are required to further re-procure as the project progresses. Consideration should be given at the investigatory (initial) stage as to whether it would deliver better value to seek competitive quotes from the outset of the intended project, for each envisaged stage of the project. This

may reduce the need for re-procuring as the project progresses and the risk of delaying the project timetable.

## 7. INVITATION TO TENDER LIST

The following methods should be used for selecting potential suppliers:

Value of Contract	Method of Selecting List
Below £75,000	The officer should consult trade journals and directories of organisations that give details of companies that trade in the field of work.
Over £75,000 (general contracts and below the PCR2015 Limit)	An advertisement should be placed by the Procurement Manager on the Supply Hertfordshire portal and Contracts Finder inviting tenders on an open basis (i.e. any tenderer that meets the minimum criteria is able to bid).

Note –For works (construction) contracts over £75,000 and below £250,000, the Officer may use Constructionline data to select three experienced (and preferably local) suppliers to obtain quotations. These quotations should be sought that the E Procurement Portal.

## 8. SPECIFICATION

- 8.1 All invitations to quote or tender for works, services or supplies must include a specification. The specification is to define the Council's objectives for the service to be provided and the requirements of potential suppliers. As far as possible requirements should be specified in terms of output and performance rather than how the potential supplier is to go about providing the service.
- 8.2 Technical specifications should refer to national standards or schemes and relevant European Union standards or equivalent where available.

## 9. EXCEPTIONS

- 9.1 It is acknowledged that the market place or extenuating circumstances does not always allow the procedures to be followed. Subject to compliance at all times with the PCR2015 , contracts can also be entered into in the following circumstances:
- 9.1.1 For the supply of goods or services where there is only one supplier and no acceptable alternative, following consultation with the Procurement Manager.
- 9.1.2 For the extension, addition to or maintenance to existing buildings, works plant or equipment, where the Executive has decided that this can only be done satisfactorily by the original supplier.
- 9.1.3 Where there is an urgent Health and Safety requirement, subject to the prior approval of the Council's Health and Safety Officer and the relevant Director.
- 9.1.4 Where the Executive considers it desirable on commercial grounds to accept



a quotation from a supplier already engaged by the Council on a project provided that further services have a connection with the original project and that the price is no more than 50% of the original contract sum.

9.1.5 For loans arrangements.

9.1.6 On behalf of another authority where the agency agreement provides that the procurement rules of that authority are to be followed.

9.1.7 Where the Executive consider that Contract Procedure Rules should be suspended, following consideration of a report from the relevant Director detailing the case for suspension.

10.2 All exemptions, and the reasons for them, must be recorded using the form in the Contract Management Handbook. Exemptions shall be signed by the officer and the relevant Director, and countersigned by the Procurement Manager **and** the Head of Legal and Democratic Services. Every exemption shall be reported, for information, to the next meeting of the Executive.

10.3 Where an exemption is necessary because of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to Council services Heads of Service may approve the exemption but they must prepare a report for the next Executive to support the action taken.

## 11. PROCUREMENT WITH OTHERS / COLLABORATIVE PROCUREMENT

11.1 In order to secure value for money the Council may enter into collaborative procurement arrangements. The relevant Head of Service must consult the Procurement Manager where the purchase is to be made using collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium.

11.2 Any contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that comply with the Contract Procedure Rules of the leading organisation, will be deemed to comply with these Procedure Rules and no exemption is required. However, agreement must be sought from the Procurement Manager.

11.3 All purchases made via a local authority purchasing and distribution consortium are deemed to comply with these Procedure Rules and no exemption is required. However, purchases above the Thresholds in the PCR 2015 must be let under the PCR 2015 rules, unless the consortium has satisfied this requirement already by letting their contract in accordance with PCR2015 on behalf of the Council and other consortium members.

11.4 A number of frameworks have a further mini competition stage where further quotations are invited against a pre determined evaluation criteria. If this facility is available within the framework then a mini competition must be undertaken

## 12. TENDER EVALUATION CRITERIA

12.1 For all contracts with a value of between £10,000 and £75,000, the contracts must be awarded on the basis of one of the two options that must be determined by the relevant Head of Service

- a) The cheapest acceptable tender (the tender that meets all delivery and specification requirements) or
- b) A pre set and disclosed price / quality criteria.

12.2 For all contracts with a value of £75,000 or over, tenders must be evaluated on a mixture of price and quality. The percentage split between price and quantity (the evaluation criteria) should be determined by the relevant Officer or Procurement Board.

12.3 The tender evaluation criteria must clearly be laid out in all tender documents

### 13. INVITATION TO TENDER/QUOTATIONS

13.1 The Invitation to Tender shall state that no tender will be considered unless it is received (via the E Procurement Portal) by the time and date stipulated in the Invitation to Tender. No tender delivered in contravention of this clause shall be considered unless it can be proven that there were technological issues with the E Procurement Portal which prevented the bidder uploading their tender on time.

13.2 All Invitations to Tender shall include:

13.2.1 A specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers.

13.2.2 A requirement for suppliers to declare that the tender content, price or any other figure or particulars concerning the tender have not been disclosed by the supplier to any other party (except where such a disclosure is made in confidence for a necessary purpose).

13.2.3 A requirement for suppliers to complete fully and sign all tender documents including a Form of Tender and certificates relating to canvassing and non-collusion.

13.2.4 Notification that tenders are submitted to the Council on the basis that they are compiled at the supplier's expense.

13.2.5 A description of the award procedure and, unless defined in a prior advertisement, a definition of the award criteria in objective terms and if possible in descending order of importance.

13.2.6 The method by which any Invitation to Tender or Quote must state that the Council is not bound to accept any quotation or tender.

13.2.7 How arithmetical errors discovered in the submitted tenders are to be dealt with. In particular, whether the overall price prevails over the rates in the tender or vice versa.

13.2.8 Notification that no tender will be considered) unless it is received via the E-Procurement Portal by the deadline stipulated in the tender documents

13.3 All Invitations to Tender or Quote must specify the service, works or goods

that are required, together with the terms and conditions of contract that will apply.

- 13.4 All **suppliers** invited to tender or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

#### 14. SUBMISSION, RECEIPT AND OPENING OF TENDERS

##### 14.1 Period for suppliers' response:

14.1.1 Suppliers invited to quote or tender must be given an adequate period in which to prepare and submit a proper quotation or tender, consistent with the urgency of the contract requirement. Normally at least four weeks should be allowed for submission of tenders.

14.1.2 PCR2015 lays down specific time periods regarding the minimum tender period.

##### 14.2 Opening and Return of tenders:

14.2.1 The tender documents must specify the procedure for return of tenders and the time and date that tenders must be uploaded

14.2.2 Following the tender return deadline, the electronic tenders will be opened by the procurement department and disseminated for evaluation.

14.2.3 Tenders received in hard copy, or by fax or email must be rejected.

#### 15. POST TENDER PROCEDURES

15.1 The Procurement Manager must be formally consulted wherever it is proposed to enter into post-tender negotiation, and such negotiations must only be conducted in accordance with the guidance issued by the Procurement Manager. Post-tender negotiations above the Threshold in the PCR2015 must be conducted in accordance with PCR2015

15.2 Negotiations must be conducted by a team of at least two officers, one must be from a division independent to that leading the negotiations (e.g. the Procurement Manager).

15.3 Officers appointed by the Head of Service to carry out post tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.

15.4 Wherepost tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.

#### 16. EVALUATION AND AWARD OF CONTRACT

16.1 Tenders must be evaluated and awarded in accordance with the award criteria.

16.2 The approval level for agreeing the award / evaluation criteria is:

Up to £49,999 – Head of Service  
 Over £50,000 – Director or Procurement Board if in place

- 16.3 The arithmetic in compliant tenders must be checked. If arithmetical errors are found they should be notified to the supplier, who should be requested to confirm or withdraw their tender. Alternatively, if the rates in the tender, rather than the overall price, were stated within the tender invitation as being dominant, an amended tender price must be requested to accord with the rates given by the supplier.
- 16.4 Heads of Services shall ensure that submitted tender prices are compared with the respective budget and any pre-tender estimates, and that any discrepancies are examined and resolved satisfactorily.
- 16.5 Where the total value is over PCR2015 Threshold the officer must notify all suppliers simultaneously and as soon as possible of the intention to award the contract to the successful supplier. The officer must provide unsuccessful suppliers with a period of at least ten days in which to challenge the decision before the officer awards the contract. If an unsuccessful supplier challenges the decision the officer shall not award the contract and shall immediately seek the advice of the Procurement Manager.
- 16.6 The officer shall debrief in writing all those suppliers who submitted a bid about the characteristics and relative advantages of the leading supplier. No information, other than the following, should be given without taking the advice of the Procurement Manager:
- How the award criteria were applied.
  - The prices or range of prices submitted, in either case not correlated to suppliers' names.
  - The name of the supplier who has been awarded the contract.
- The same information should be given to those who responded in any pre-tender selection process.
- 16.7 If requested, the officer shall within 15 days give the notification information required by Procedure Rule 16.6 to suppliers who were deselected in the pre-tender short-listing process (if relevant).
- 16.8 The approval level for accepting tenders and quotations is as follows:

Executive	Over £100,000
Director	Up to £100,000
Service Heads / Senior Manager	Up to £75,000

17. CONTRACT FORMALITIES

- 17.1 Agreements shall be completed as follows (subject to delegated financial limits):

<b>Total Value</b>	<b>Method of Completion</b>
Up to £100,000	Signature
Above £100,000	Sealing

17.2 All contracts must be concluded before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the Head of Service. An award letter is insufficient.

18. SIGNATURE

18.1 The officer responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it.

19. SEALING

19.1 Where contracts are executed under seal, the affixing of the Council's common seal must be attested to, by or on behalf of the Head of Legal and Democratic Surveyors . The Head of Legal and Democratic Services is responsible for the process of sealing contracts.

19.2 Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal. The seal must not be affixed without the authority of the Executive or a Head of Service acting under delegated powers.

19.3 A contract must be sealed where:

- The Council wishes to enforce the contract for more than six years after its end. or
- The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services.
- Where there is any doubt about the authority of the person signing for the other contracting party.
- Where a bond is established on behalf of the contractor(s) or their guarantors
- Where the total value is expected to exceed £100,000.

20. BONDS AND PARENT COMPANY GUARANTEES

20.1 Officers must obtain a performance bond for all construction contracts with a value of £500,000.00 or over. For all contracts with a value above £100,000.00 a risk assessment (as detailed in 20.2) should take place to ascertain if a Performance Bond and / or a Parent Company Guarantee is required.

20.2

Type and Value of Contract	Security required
Contract Value below £100,000.00	None

<p>Service Contract below £1,000,000.00 in value where there is little risk to the Council. Little risk would include the following criteria:</p> <ol style="list-style-type: none"> <li>1) All payments are made after all work is completed and signed off by the Council.</li> <li>2) The service could easily be performed by another contractor (or the Council) who could be engaged at short notice.</li> <li>3) The cost of someone else performing the contract is not substantially more (this would be ascertained from previous bids received).</li> </ol>	None
Service contract above £1,000,000.00 in value or where the criteria above is not met	Performance Bond at 10% of the value of the contract or parent company guarantee to be obtained.
Where the council receives an income from the Contractor (which is greater than the expenditure by the council)	Performance Bond at 10% of the value of the contract or parent company guarantee must be obtained.
Where the contract is a construction contract greater than £500,000.00	Performance Bond of 10% of the value of the contract must be obtained.

## 21. PREVENTION OF CORRUPTION

21.1 The officer must comply with the Employee Code of Conduct and the Council's Anti-Fraud & Corruption Strategy and must not invite or accept any gift or reward in respect of the award or performance of any contract.

- It will be for the officer to prove that anything received was not received corruptly.
- High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to in Procedure Rule 21.2.

21.2 The following clause must be inserted in every written Council contract:

"The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following things:

- (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done); or
- (b) commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972; or
- (c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees.

Any clause limiting the Contractor's liability shall not apply to this clause."

## 22. DECLARATION OF INTERESTS

- 22.1 Officers with an interest in a contract being considered by the Council must give notice of such an interest in writing to the Chief Executive and the Monitoring Officer. Officers must also declare all relationships of a business or private nature with external contractors or potential contractors to their Manager or Director.

## 23. POST CONTRACT MONITORING AND EVALUATION

- 23.1 During the life of the contract the officer must monitor in respect of

- Performance
- Compliance with specification and contract
- Cost
- Any Best Value requirements
- User satisfaction and risk management

- 23.2 Where the total value of the contract exceeds £200,000, the relevant Director must make a written report to the Chief Executive and to the relevant Portfolio Holder evaluating the extent to which the purchasing need was met by the contract. This should be done normally when the contract is completed. Where the contract is to be re-let, a provisional report should also be available early enough to inform the approach to re-letting of the subsequent contract.

## 24. RULES OF MEMBERS IN PROCUREMENT

- 24.1 For any project with an estimated value of £150,000 then Elected Members must be given the opportunity to be involved in the process.
- 24.2 Authority must be obtained from the Executive to commence the process. When seeking authority, Members must be invited to be part of the process. Their input could be purely observation, or a Member Project could be set up to oversee the Procurement and make strategic decisions such as determining the evaluation criteria and the shortlist to receive tenders.
- 24.3 The final decision on Contract award must be made by the Executive.

## 25. FAILURE TO COMPLY WITH THE CONTRACT PROCEDURE RULES

- 25.1 Officers must comply at all times with the Contract Procedure Rules.
- 25.2 If an officer does fail to comply or discovers that another officer has failed to comply with the Contract Procedure Rules, then this must be reported to their line manager immediately. Failure to comply and/or failure to report may be considered under the Disciplinary Procedures of the Council in force.
- 25.3 In addition to the possible disciplinary consequences, a report will need to be prepared for consideration by the Council's Executive explaining the circumstances of the failure to comply with the Contract Procedure Rules and seeking a retrospective waiver accordingly.



