

Draft

# CONTRACT REGULATIONS



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## **CR1. INTRODUCTION**

These Contract Regulations (known as the Rules) are made under Section 101 of the Local Government Act 1972 and approved by Royal Berkshire Fire Authority (“the Authority”) to facilitate efficient and transparent decision making.

The Monitoring Officer is required to ensure that the Rules are fit for purpose, adhere to the legislative framework and follow best practice. As such, these Rules will be regularly reviewed and amended by the Authority.

These Rules are to be read and followed by all RBFRS employees including Thames Valley Fire Control (TVFCS), contract staff and anyone approved to act on behalf of the Authority.

## **CR2. DEFINITIONS**

Contract rule definitions can be found at Appendix 2.

## **CR3. WHEN THESE RULES APPLY**

These Rules apply whenever the Authority expects to give or receive money or payment in kind. They apply to both capital and revenue and cover:

- All expenditure and contracts for goods, works and services
- The acquisition or disposal of land, buildings or capital plant and vehicles

These Rules do not apply to:

- Employment contracts of staff
- The engagement of Counsel or Expert Witness
- Grants
- Public to Public Arrangements
- Statutory Payments
- Services provided in house by the Authority’s own employees
- Approved Procurement Card expenditure

These Rules may be waived under certain conditions as set out in section CR17 but must always comply with prevailing laws.

## CR4. ADDITIONAL GUIDANCE, RULES AND LAW

Other relevant guidance can be found in:

RBFA Finance Regulations and Risk Framework	<a href="https://decisionmaking.rbfrs.co.uk/documents/s0688/FinancialRegulations.docx.pdf">https://decisionmaking.rbfrs.co.uk/documents/s0688/FinancialRegulations.docx.pdf</a>
RBFA Procurement Contract Management Strategy	To be added
Scheme of Delegation	<a href="http://siren/document-library">http://siren/document-library</a>
Public Contract Regulations 2015	<a href="http://www.legislation.gov.uk/uksi/2015/102/contents/made">http://www.legislation.gov.uk/uksi/2015/102/contents/made</a>
The Authority's Procurement Guidance and Toolkit	To be added
Policing and Crime Act 2017	<a href="http://www.legislation.gov.uk/ukpga/2017/3/contents/enacted">http://www.legislation.gov.uk/ukpga/2017/3/contents/enacted</a>
National Fire Reform Board	<a href="https://www.local.gov.uk/fire-reform-board-england">https://www.local.gov.uk/fire-reform-board-england</a>
Modern Slavery Act and Human Trafficking 2015	See Terms and Conditions Section 35

## CR5. RESPONSIBILITIES

These Rules apply to all Officers and any other persons authorised to act on behalf of the Authority.

Directors and Heads of Service are responsible for ensuring that all staff attend relevant training and have a full understanding of these Rules and related guidance as it affects their work.

Staff must attend relevant internal training before being authorised to:

- seek quotes or be part of a tender evaluation panel
- manage contracts

The Procurement team are responsible for:

- ensuring that all tenders issued are carried out in accordance with the Public Contract Regulations 2015 and best practice;
- creating opportunities to collaborate with other emergency services in the development of joint contracts through standardising commodities and services;
- reviewing supplier suitability and undertaking a financial assessment for all new Suppliers
- carrying out regular financial health checks of key suppliers;
- ensuring that staff are appropriately trained and supported to carry out low value quotes and tenders;

- developing the use of Frameworks and joint contracts where they offer best value;
- the secure retention of contracts on behalf of the Head of Finance and Procurement.

Directors and Heads of Service must ensure that every contract:

- supports the delivery of the Corporate Aims and Objectives;
- has adequate or agreed budget provision in place to fund the whole life of the contract;
- provides value for money and continuous improvement throughout the whole life of a contract;
- is awarded based on the publicised evaluation criteria and that non-commercial considerations do not influence any contract award decision;
- considers the whole life costs including disposal;
- has a risk register if the contract value is in excess of £50,000 and the risks are regularly monitored;
- complies with Financial Regulations, Health and Safety and Environmental Regulations;
- does not conflict with any other contract already in place and used by the Authority.

## **CR6. INTERESTS OF COUNCILLORS AND OFFICERS**

It is a criminal offence under section 117 of the Local Government Act 1972 for an Officer not to declare a financial interest in a contract and for a Councillor not to declare a financial interest in a contract in accordance with the Localism Act 2011.

Officers and Councillors must declare in writing, any pecuniary interest in any contract or tender process to the Head of Finance and Procurement as soon as possible who will keep a register for this purpose.

## **CR7. CALCULATING THE TOTAL CONTRACT VALUE**

The calculation of the estimated value of a procurement shall be based on the total amount payable, net of VAT, as estimated by the contracting authority, including any forms of option to extend as set out in the procurement documents.

A Procurement shall not be subdivided with the effect of preventing it from falling within the scope of a project.

A contract must not be artificially split into smaller contracts to distort the overall procurement as this would be viewed as anti-competitive and the Authority could be challenged.

For example if several quotes/tenders are issued with the same Common Procurement Vocabulary Codes (CPV) within a few months of each other this could be viewed as distorting the procurement process and classed as Anti-Competitive.

## **CR8. E TENDERING, CONTRACT DOCUMENTATION AND RETENTION**

Quotes and tenders over £10,000 will be released to the market electronically (where appropriate), via the Authority's E tendering system. The opportunity will also be advertised on the Government's procurement portal.

The relevant Head of Service is responsible for retaining copies of all quotes below £10,000. Quotes awarded over £5,000 must be sent to procurement for inclusion on the Corporate Contract Register which will be reviewed and updated monthly and a copy will be available on the Authority's website.

Unsuccessful quotes and tenders must be disposed of 12 months after the award of contract. The successful tender must be retained for a minimum of seven years from the end of the contract.

The contract register will comply with the Transparency Code for Local Government.

## **CR9. THRESHOLDS FOR SEEKING TENDERS AND QUOTES**

Any expenditure that falls within the remit of procurement must follow the competitive process set out in Appendix 1.

For all tenders over £50,000 a Procurement Launch Document (PLD) must be prepared by the owning Department to assess the route to market and undertake a financial review before then proceeding with the procurement.

No additional contract must be approved where a corporate contract already exists without the approval of the Head or Deputy Head of Finance and Procurement.

Any new contract or order for IT equipment or software must be approved by the Head of Business Information and Systems.

## **CR10. PUBLIC CONTRACT REGULATIONS**

The procurement process will follow Public Contract Regulations where required.

The Procurement team will ensure the most suitable tender process is selected.

Please note there will be a mandatory standstill period of ten days observed prior to award of contract for all contracts above OJEU<sup>1</sup> thresholds. The contract cannot be awarded until the standstill period has been observed.

## **CR11. USE OF FRAMEWORKS**

For many categories of expenditure there are compliant frameworks in place. Where these meet the requirements of the Authority and the framework demonstrates value for money, these should be used to reduce the administrative burden.

Framework contract terms must be reviewed before awarding to ensure these do not create a risk to the Authority.

## **CR12. DEVELOPING AND USE OF A COLLABORATIVE CONTRACTS**

The Policing and Crime Act 2017 places a duty on police, fire and emergency ambulance services to seek opportunities to collaborate where it is efficient or effective to do so.

The Procurement team will review all new procurement requirements, ensuring that all opportunities to collaborate with partner organisations are exploited where they offer benefits to the Authority and collaborate with partners to develop new joint contracts.

## **CR13. ACCEPTANCE OF QUOTATIONS AND TENDERS**

Quotes and tenders may be accepted subject to the following:

- the price is within the budget;
- the quote or tender has been evaluated in accordance with the published criteria and offers the best value for money;
- where a framework is used, any further competition requirement is carried out in accordance with the framework agreement;
- the Authority's standard contract terms are accepted by the tenderer or alternative terms have been agreed by the Authority;
- the tenderer is determined as having the financial capability and capacity to meet the requirements of the contract by the Head or Deputy Head of Finance and Procurement;
- no conflict of interest has been identified;

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<sup>1</sup> From 1 January 2021 a new e-notification service called Find a Tender will be used to post and view public sector procurement notices.

- the tenderer has met the Authority's standard in relation to no canvassing or collusion.

## **CR14. CONTRACT AWARD PROCEDURE**

A contract may be awarded by the approved Officer in accordance with Appendix 1 if there has been compliance with these Rules and the Finance Regulations and a fully signed Contract Recommendation Award completed for any purchases over £10,000.

No officer below Head of Service can award a contract over £10,000.

Tenders for contracts over £1,000,000 require a business case to be approved by Management Committee before the tender process commences. A tender price up to 5% more than the business case can be accepted by officers if budget provision exists. If the final tender award is between 5% and 10% greater than the business case figure, agreement has to be sought from the Chair of the Fire Authority before awarding. Any variance greater than 10% would need the approval of Management Committee.

## **CR15. FORMAT OF CONTRACTS**

Contracts and one off purchases with a value below £10,000 require the issue of a Purchase Order (PO) as a minimum, which states the Authority's standard terms of business.

For any contract or expenditure over £10,000 and up to £50,000 a PO and a letter or short contract document that sets out the agreed terms and contract period can be signed by the relevant Head of Service and Head or Deputy Head of Finance and Procurement.

All contracts over £50,000 require a contract signed by the Head of Service and Director or Chief Fire Officer / Chief Executive as well as the Head or Deputy Head of Finance & Procurement.

All relevant contracts must include the Authority's standard terms of business and relevant contract terms as set out in these regulations unless alternative are agreed and accepted by the Authority.

## **CR16. SIGNING AND SEALING OF CONTRACTS**

Authorisation levels for the signing of contracts are set out in Appendix 1.



Contracts will be executed under seal where it is considered appropriate for the purpose of transacting the Authority's business or safeguarding its interests. Such contracts are likely to include major capital works.

All contracts over £1,000,000 will bear the common seal of the Authority.

## **CR17. WAIVER OF CONTRACT REGULATIONS**

In exceptional circumstances it may be appropriate to waive these Contract Procedure Rules.

Competitive quotes or tenders are not required where any of the following apply:

- effective competition is prevented due to government control;
- the supply or service is unique to a single supplier such as proprietary or patented goods or is deemed necessary due to the requirements of operational alignment and there is no satisfactory alternative;
- the service or works are of a specialist nature and can only be carried out by one supplier;
- the emergency requirements are brought about by events that could not have reasonably been foreseen;
- if the goods or services are not procured there is a risk of danger to life or property or a major impact on the Authority or the public.
- the market is such that effective competition does not exist and it can clearly be demonstrated that the proposed award represents best value for the Authority.

A waiver of up to £50,000 can be approved by the Head or Deputy Head of Finance and Procurement, Head of Service and a Director or Chief Fire Officer / Chief Executive, using the standard waiver form which is to be retained by the Head or Deputy Head of Finance and Procurement.

Waivers over £50,000 but below £100,000 can be approved by the Head or Deputy Head of Finance and Procurement, Head of Service and a Director or Chief Fire Officer / Chief Executive in consultation with the Chairman of the Fire Authority and a retrospective report submitted to the next available committee.

Waivers of £100,000 and above can only be approved by the Management Committee and in compliance with the Public Contract Regulations 2015.

## **CR18. CONTRACT MANAGEMENT GUIDANCE**

All contracts over £10,000 will be monitored in accordance with the internal Contract Management Guidance Framework.

Contracts over £10,000 will include a named contract manager responsible for:

- ensuring the contract expectations are being met or exceeded;
- managing the performance of the supplier and carry out contract reviews;
- maintaining a risk register for contracts over £50,000;
- recommending variations to the contract for approval.

## **CR19. SUB- CONTRACTING AND NOVATION**

For works and specialist contracts the lead contractor may wish to use sub-contractors in order to discharge some or all of the contractual obligations. The Head or Deputy Head of Finance and Procurement must consider prior to any contract award whether collateral warranties are required and to include this within the contract terms.

All contracts shall include a statement that does not provide an automatic right of novation. The Head or Deputy Head of Finance and Procurement must approve any request to novate a contract, subject to carrying out a supplier suitability assessment.

## **CR20. CONTRACT VARIATIONS AND EXTENSIONS**

A contract variation may only be approved where the proposed variation does not materially alter the terms of the contract or breach the Public Contract Regulations 2015. Variations should only be entered into after considering the following:

- the addition of good/services which were not originally included within the contract requirements cannot be of a material value compared to the overall contract value;
- a contract variation cannot exceed more than 50% of the original contract value;
- the contract value as a result of the variation will not exceed or breach the requirements as set out in the Public Contract Regulations 2015;
- budget provision exists to fund the contract variation.

A contract extension can only be triggered if:

- the contract has been satisfactorily delivered during the initial period of the contract, all obligations have been met successfully and the contract is continuing to represent best value;
- the extension period proposed is triggered by both parties and is in accordance with the contract terms;
- the contract value as a result of the extension will not exceed or breach the requirements as set out in the Public Contract Regulations 2015;
- budget provision exists to fund the contract extension.

A contract extension and / or variation must be approved by the Head or Deputy Head of Finance and Procurement and Head of Service and Director before being agreed and signed by all parties.

## **CR21. TUPE**

The Director of Support Services must be consulted before any process is commenced which may result in any transfer of staff under the Transfer of Undertakings (Protection of Employment) Regulations ("TUPE"), or any staff who are or were previously Fire Authority employees, members of the LGPS or a Firefighters' Pension Scheme.

## **CR22. SOCIAL VALUE ACT 2012 AND SAFEGUARDING**

The Act requires people who commission services to think about how they can also secure wider social, economic and environmental benefits as part of the delivery of the contract. This might include the employment of people from the local area or using local companies or third sector partners within the supply chain.

Before procurement is started commissioners should think about whether the services they are going to buy, or the way they are going to buy them, could secure these benefits for their area or stakeholders.

A Project Launch Document will be prepared for tenders over £50,000 to consider these issues. Tenderers will be also be required to consider options for embracing social value in any relevant contract they tender for.

All service contracts and those where partners are providing services on our behalf which potentially include the supervision of vulnerable adults or children will include a contract clause relating to safeguarding and the supplier's responsibilities in relation to the appointment of their employees and agents.

## **CR23. MODERN SLAVERY ACT**

In accordance with Section 54 of the Modern Slavery Act 2015 ("MSA") the Authority will take all reasonable steps to ensure that slavery and human trafficking is not taking place in any of its supply chains or any part of its business.

Anti-slavery and trafficking clauses are included in all RBFA standard contracts terms. The clauses also include an obligation for the supplier to contractually manage the risk of modern slavery occurring within its own supply chain.

## **CR24. EXCLUSION LIST**

The Public Contract Regulations 2015 (Regulation 57) provides the Authority with the ability to exclude a supplier from tendering for future contracts where one or

more of the mandatory exclusions can be applied. This might occur if a supplier has previously defaulted on a contract.

## **CR25. TRANSPARENCY**

The Authority complies with all the requirements of the Local Government Transparency Code of Practice through monthly publication on its website.

## **CR26. ACQUISITION AND DISPOSAL OF LAND AND BUILDINGS**

These Rules apply to the acquisition or disposal of freehold or leasehold buildings. Prior to any formal commitment being made or signed a report must go to the Management Committee to advise:

- the estimated value of the land or buildings;
- the current or most recent building use;
- options considered;
- recommendation and disposal route to be followed;
- proposed sale value and planned use;
- if a disposal is for less than best consideration, the report must say whether consent is needed from the Secretary of State or Home Office.

Tenders for disposal do not need to be submitted via the corporate E-tendering portal and may be managed by a third party. The three Statutory Officers must approve and oversee the process that will be used to dispose of land and buildings.

## **CR27. INTERPRETING THESE RULES**

Questions about these Rules and any related guidance should be addressed to the Head or Deputy Head of Finance and Procurement.

## APPENDIX ONE – PROCUREMENT THRESHOLDS

Total Contract Value	Process	Person Responsible for Process	Contract Award Recommendation and Contract Authorisation
£0,000 <= £9,999	Best Practice to receive written quotes.	Officer authorised by Head of Service	Not Required – PO Only
<b>Option 1.</b> £10,000 < = £49,999 – price evaluation comparison only	Three quotes required unless the market is restricted.  Evaluation based on price only with lowest price supplier awarded the goods and/or service/s.	Head of Service	<b>Two Signatories</b> 1. Head of Service or Director or Chief Fire Officer / Chief Executive  2. Head or Deputy Head of Finance & Procurement
<b>Option 2.</b> £10,000 < = £49,999 – quality and price evaluation	Three Tenders required unless the market is restricted  Evaluation based on price and quality with the Most Economically Advantageous Tender (MEAT) awarded the contract.	Head of Service supported by Procurement	<b>Two Signatories</b> 1. Head of Service or Director or Chief Fire Officer / Chief Executive  2. Head or Deputy Head of Finance & Procurement
£50,000 to £999,999	Invite tenderers using Tender Portals or Framework.	Head of Service supported by Procurement Team	<b>Three Signatories</b> 1. Head of Service  2. Head or Deputy Head of Finance & Procurement  3. Director or Chief Fire Officer / Chief Executive

Over £1,000,000	Invite tenderers using Tender Portal	Head of Service supported by Procurement Team	<b>Three Signatories</b> 1. Head of Service  2. Head or Deputy Head of Finance & Procurement  3. Director or Chief Fire Officer / Chief Executive  <b>And Management Committee Approval as per CR14</b>
Waiver	CR17 – Waiver of Contract regulations. Based on this criteria service can be awarded if it meets these criteria without going to tender.	Head of Service supported by Procurement Team	<b>Three Signatories</b> 1. Head of Service  2. Head or Deputy Head of Finance & Procurement  3. Director or Chief Fire Officer / Chief Executive
Extension/Variation	When taking up option to vary or extend a contract based on contract award.	Head of Service supported by Procurement team	<b>Three Signatories</b> 1. Head of Service  2. Head or Deputy Head of Finance & Procurement  3. Director or Chief Fire Officer / Chief Executive

## APPENDIX TWO – CONTRACT REGULATIONS

### TERMINOLOGY

The table below provides an explanation to the terms used in the Contract Regulations.

Bond	An insurance policy; if the contractor does not do what it has promised under a contract with the Authority, the Authority can claim from the insurer the sum of money specified in the bond (often ten per cent of the contract value). A bond is intended to protect the Authority against a level of cost arising from the contractor's failure.
Collateral Warranty	This is an agreement between a sub-contractor and lead contractor to extend any warranty for their work to the primary contract so that the client receives the benefit of the warranty. This is done as the sub-contractor is not party to the main contract.
Competitive tendering	Awarding contracts by the process of seeking competing tenders.
Contract	The legal agreement which sets out the rights and obligations of all parties, which is intended to be enforceable in law.
Contract Regulations	The Authority's own internal control procedures for procurement and contracting.
Collusion	A fraudulent arrangement between two or more parties whereby prices or service requirements are manipulated to get round competitive tendering.
Contract documents	Documents incorporated in the enforceable agreement between the Authority and the contractor, including contract conditions, specification, pricing document, form of tender and the successful tenderer's responses (including method statements) and all other relevant documents expressed to be contract documents (such as relevant correspondence).
Contract value	The total monetary value of a contract over its full duration (not annual value). The method of payment for contracts for which tenderers quote rates per chargeable day.
Default	A breach of a contract condition, e.g. a delay in the promised delivery.

E-procurement or E-tendering	The use of electronic methods in every stage of the purchasing process from identification of requirement through to payment and potentially to contract management.
Evaluation	Detailed assessment and comparison of contractor, supplier or service provider offers against financial and quality criteria.
Framework agreement	An arrangement under which a contracting authority establishes with a provider of goods, works or services, the terms under which contracts subsequently can be entered into, or 'called-off' (within the limits of the agreement) when particular needs arise.
Invoice	A request to pay submitted by a supplier of works, goods and/or services.
Liquidated damages	A genuine estimate of the loss that the authority will suffer if the contractor defaults when performing the contract. This may form the basis of deductions from payments, which will be calculated according to the specific circumstance relating to each type of contract.
Performance bond	Bonds or guarantees given to clients by specialist insurers, on behalf of contractors and at their expense, binding the insurers to compensate clients (up to the amount of the bond obtained) in the event of a default.
Procurement	The process of acquiring goods, works and services, covering acquisition from third parties and from in-house providers. The process spans the whole life cycle from identification of needs, through to the end of a services contract or the end of the useful life of an asset.
Purchase order	This is a standard document setting out the specific requirements to be provided by a supplier at an agreed date and price.
Quotation or Quote	Any offer by a supplier to supply goods, works or services requested either orally or in writing. A quotation may be the written confirmation of an earlier offer.
Services	Services provided to the Authority by an external service provider (an individual or a company). Contract Standing Orders may have different values covering works, services or supplies.
Specification	The document used to set out our requirements for the goods or services.
TUPE	The Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended from time to time)
Variation	Any alteration, modification, addition to or deletion of any requirement of the contract terms or specification.





