

# **B – Contract Procedure Rules and Standing Orders**

**For the Supply of Goods, Provision of  
Services and Execution of Works**

Made on **XXX** under section 135 of the Local Government Act 1972

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# Contract Procedure Rules and Standing Orders for the Supply of Goods, Provision of Services and Execution of Works

## DEFINITIONS

In these Rules the following words and expressions will have the following meanings assigned to them:

Defined term	Definition
Award Criteria	Shall mean the criteria by which the Contract is to be awarded to the successful Supplier
Award Decision	Shall mean the procedure by which the Officer is able to decide to award the Contract to a particular Supplier/s
Best Value	Shall mean the duty, which Part I of the Local Government Act 1999 places on local authorities, to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the Council
Cabinet Member	Shall mean any councillor appointed to the Cabinet by the Leader of Council for the time being, or such Officer as they may duly authorise to act on their behalf or may be authorised to act on their behalf under the Council and Cabinet Scheme of Delegation
Call-off Contract	Shall mean a Contract awarded under a Framework Agreement or Dynamic Purchasing System
Candidate	Shall mean any and all suppliers participating or expressing an interest in participating in the Council's Quick Quotes, Quotations, Selection Questionnaire and ITT activity
Competitive Dialogue	Shall mean as referred to in regulation 30 of the 14.1.a
Competitive Procedure with Negotiation	Shall mean as referred to in regulation 29 of the 14.1.a

Constitution	<p>Shall mean the constitutional document approved by the Council which:</p> <ul style="list-style-type: none"> <li>• allocates decision making powers and responsibilities within the Council and with partners;</li> <li>• delegates authority to act through the Council and Cabinet Scheme of Delegation; and</li> <li>• regulates the behaviour of individuals and groups through rules of procedure, codes and protocols</li> </ul>
Contract	<p>Shall mean a legally binding agreement concluded in writing for consideration (whatever the nature of the consideration, whether by payment or some other form of reward) under which the Council engages a Supplier to provide Goods, Works or Services and where the context requires a Contract shall refer to an order made/call-off contract entered into under a Framework Agreement. All Contracts are let on behalf of the Council as a whole and no service, team, unit or other part of the Council has the legal capacity to enter independently into any Contract</p>
Contracting Authority	<p>Shall mean Somerset County Council or any entity over which Somerset County Council has control</p>
Contracts Finder	<p>Shall mean the web-based portal provided for the purpose of publicising contract opportunities under the EU Threshold by or behalf of the Cabinet Office</p>
Contracts Register	<p>Shall mean the Council's repository of Contracts as held on the Council's Electronic Tendering System</p>
Council	<p>Shall mean Somerset County Council</p>
Dynamic Purchasing System	<p>Shall mean as referred to in regulation 34 of the 14.1.a</p>
Electronic Tendering System	<p>Shall mean the system approved by the CPT for the purposes of conducting procurement activities electronically</p>
EU	<p>Shall mean European Union</p>
EU Threshold	<p>Shall mean the relevant threshold as set out in either:</p> <ol style="list-style-type: none"> <li>1. Regulation 9 of the Concessions Contracts Regulations 2016 where those rules apply; or otherwise</li> </ol>

	2. Regulation 5 of the Public Contracts Regulations 2015
European Commission	Shall mean the body responsible for promoting the general interest of the EU by proposing and enforcing legislation as well as by implementing policies and the EU budget
Financial Instructions	Shall mean the Financial Regulations and Financial Procedures, and any subsequent guidance, outlining the Officer's responsibilities for financial matters as issued by the Section 151 Officer in accordance with the Constitution
Framework Agreement	Shall mean an agreement or other arrangement between one or more contracting authorities and one or more economic operators which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the economic operator will enter into one or more contracts with a contracting authority in the period during which the framework agreement applies
Goods	Shall mean physical products purchased or manufactured on request
Governance Board	Shall mean a Council Officer meeting which oversees the annual governance statement and keeps the Constitution and democratic arrangements fit for purpose. It must be noted that this is an advisory and not a decision-making meeting
Grant	Shall mean a direct non-commercial financial contribution, by way of donation, to a specific beneficiary to help achieve an objective in the public interest
Innovation Partnership	Shall mean as referred to in regulation 31 of the 14.1.a
Invitation to Tender (ITT)	Shall mean the document in the form required by these Rules to seek Tenders from Candidates
Key Decision	Shall mean a decision to be taken by the Council with an associated cost or savings value at or above £500,000
Leader of the Council	Shall mean the Councillor appointed by the Council to the position of Leader for the time being or any such Officer as they may duly authorise or may be authorised to act on their behalf under

	the Council and Cabinet Scheme of Delegation
Legal Services	Shall mean the Council's internal legal advisory department
Light Touch Regime	Shall mean the statutory procedure set out in the Regulations (Regulations 74 to 76) regulating the award of Contracts for services listed in Schedule 3 of the Regulations
Member	Shall mean any councillor appointed to the Council for the time being
Most Economically Advantageous Tender (MEAT)	Shall mean evaluation criteria that reflect the qualitative, technical and sustainable aspects of a Tender submission as well as price, which can be used when reaching a Contract award decision
Negotiated Procedure without Prior Publication	Shall mean as referred to in regulation 32 of the 14.1.a
Non-commercial Considerations	Shall mean factors that must not be taken in to account at the Award Decision stage, such as the introduction of Selection and Award Criteria that have not been disclosed out the outset of the procurement or that do not meet the principle of MEAT
Non-key Decision	Shall mean a decision to be taken by the Council with an associated cost or savings value of less than £500,000
Officer	Shall mean a person employed by the Council whose responsibility it is to commission or procure Goods, Services or Works or ensure that Officers that they have line or matrix management responsibility for commissions or procures Goods, Services or Works in accordance with these Rules; and Shall mean as Procurement Officer
OJEU	Shall mean the Official Journal of the European Union
Open	Shall mean as referred to in regulation 37 of the 14.1.a
Passport to Procure	Shall mean the procurement training available via The Learning Centre
Procurement Documents	Shall mean the documents provided to Candidates at the outset or during the procurement process, the purpose of which is to explain the procurement opportunity, the Selection and Award Criteria, the means of making an Award Decision, the submission requirements

	and the terms and conditions of contract
Procurement Officer	Shall mean a Council Officer that has completed the Passport to Procure training and which is employed to the CPT
Quick Quote	Shall mean the procurement process to be followed within the Council's Electronic Tendering System that allows the Officer to seek Quotations from a minimum of three Candidates
Quotation	Shall mean the document in the form required by these Rules to seek Quotations from Candidates
Relevant Contract	Shall mean a Contract to which these Rules applies, which includes: the supply or disposal of Goods; the hire, rental or lease of Goods or equipment, the provision of Works and the supply of works materials, the provision of Services, including consultancy services, the granting of Works Concessions or Services Concessions Contracts
Relevant Legislation	Shall mean the Acts of Parliament referred at section <i>Relevant Legislation</i> and the Treaty Principles and includes any new and amending legislation
Relevant Policy	Shall mean the policy referred to in section <i>Relevant Policy</i> and any documents superseding that referred to
Restricted	Shall mean as referred to in regulation 38 of the 14.1.a
Scheme of Delegation	(The Council and Cabinet Scheme of Delegation) shall mean the high level overarching scheme contained within the Constitution which set outs delegations to directors. (The Officer Scheme of Delegation) shall mean the scheme which sits underneath the Council and Cabinet Scheme of Delegation, but which is not contained within the Constitution, which sets out the level of delegations below the main scheme and covers Officer delegations
Section 151 Officer	Shall mean the Officer employed in the position of chief finance officer or such Officer as they may duly authorise to act on their behalf
Selection Criteria	Shall mean the Authority's minimum



	requirements by which the Tenderer is to be assessed as being suitable to be invited to Tender, as set out in the Selection Questionnaire
Selection Questionnaire	Shall mean the questions to be asked of Candidates to assess their suitability as issued by the Crown Commercial Services, an executive agency of the Cabinet Officer; and/or the first stage document of a two-stage procurement process used to assess applications for inclusion in the shortlist of Candidates who will be invited to submit a final proposal in every Restricted procedure
Services	Shall mean the supply of time, effort, and/or expertise instead of a tangible product
Services Concession Contract	Shall mean a Contract concluded in writing where the payment is simply that the concessionaire has the right to profit from the Works/Services that are the subject of the Contract
Social Value	Shall mean additional benefit to the community from a commissioning / procurement process over and above the direct purchasing of Goods, Services and outcomes
Standstill Period	Shall mean the minimum ten (10) day period between the notification date of unsuccessful Candidates and the date of contract award
State Aid	Shall mean any advantage granted by the Council through its resources on a selective basis to any organisations, the result of which could potentially distort competition in the EU
Supplier	Shall mean the successful Candidate
Sustainable Procurement	Shall mean the consideration of economic, social and environmental benefits within the procurement process
Tender	Shall mean the document in the form required by these Rules to seek Invitations to Tender from Candidates
The Learning Centre	Shall mean the Council's electronic training system
Total Contract Value	The whole of the value or estimated value (in money or equivalent value) for a single purchase or Contract
Transfer of Undertaking (Protection of	Shall mean the legislation that applies

Employment) (“TUPE”)	where responsibility for the delivery of Works or Services for the Council is transferred from one organisation to another and where the individuals involved in carrying out the work are transferred to the new employer and which seeks to protect the rights of employees in such transfers
Works	Shall mean the construction of structures of all kinds, such as buildings, highways, bridges, as well as structural renovations, extensions, and repairs

## **SECTION A: GENERAL INFORMATION**

### **1. Introduction**

- 1.1. These Contract Procedure Rules and Standing Orders (the “Rules”) are the Contracting Authority’s (the “Council”) rules for the buying, renting and leasing of Goods, Services and Works and apply to all Relevant Contracts made by the Council unless otherwise specified herein.
- 1.2. The aim of these Rules is to assist Officers in achieving best practice and lawful procurement, to ensure that the Council fulfils its duty of delivering Best Value for its council tax payers and excellent outcomes for its service users.
- 1.3. The Rules also provide a basis for fair competition by providing transparent and auditable procedures to protect the Council’s reputation from any suggestion of dishonesty or corruption.
- 1.4. These Rules apply to all Officers of the Council or any companies or organisations within the Council’s control. They are part of the Council’s Constitution and therefore Officers have a duty to ensure they have fully understood them and have sufficient authority prior to commencing any procurement or contracting activity (see section 10. ).
- 1.5. Officers must also ensure that any persons or organisations acting on behalf of the Council fully comply with these Rules.
- 1.6. These Rules are mandatory and shall govern and regulate the Council’s procurement and contract award procedures. Officers must also refer to the Commercial and Procurement Team (“CPT”) for more detailed guidance throughout the procurement process.
- 1.7. The expectation is of compliance to these Rules and in any cases of doubt advice must be sought from the CPT. Failure to follow these Rules may be dealt with as a breach of the Council’s standards of conduct and in certain instances may be treated as gross misconduct and give rise to action under the Council’s disciplinary policy and procedure (see section 57. 57. ).
- 1.8. If upon reading the Rules the Officer discovers a lack of clarity or wishes to ensure their comprehension and compliance, they must consult with the CPT for advice and guidance. The Officer shall not be excused from these Rules on grounds of a lack of understanding.
- 1.9. The administration, monitoring and governance of these Rules shall be the responsibility of the CPT.

## **2. Basic principles**

- 2.1. All procurement and contracting activity and Contract and supplier management must:
- a. comply with these Rules and Financial Instructions;
  - b. achieve Best Value for public money spent;
  - c. be consistent with the highest standards of integrity;
  - d. comply with the Relevant Legislation (including the Council's statutory duties and powers);
  - e. comply with any relevant Council policies;
  - f. support the Council's corporate and departmental aims; and
  - g. ensure that Non-commercial Considerations do not influence the Award Decision.
- 2.2. All Contracts must comply with the following principles of EU and UK procurement law and policy (the "Treaty Principles"):
- a. free movement of Goods and Services;
  - b. non-discrimination;
  - c. openness and transparency
  - d. equal treatment for all; and
  - e. proportionality.

## **3. Officer responsibilities**

- 3.1. The Officer is responsible for the procurement and contracting activity and Contract and supplier management and must:
- a. comply with and ensure that their Officers comply with these Rules and Financial Instructions;
  - b. comply with the Relevant Legislation;
  - c. ensure that any persons or organisations acting on behalf of the Council also fully comply;
  - d. take account of all necessary legal, financial, procurement, technical and any other professional advice; and
  - e. complete the Passport to Procure training available through The Learning Centre.
- 3.2. Prior to commencing a procurement or contracting activity the Officer must:
- a. consider options for delivery of the required Goods, Services or Works;
  - b. ensure that there is appropriate Council authority to procure and sufficient budgetary provision approved and in place;
  - c. identify the size, scope, commercial principles, term and specification of the Goods, Services and Works required;
  - d. check whether the Council already has an available and appropriate Contract in place in the Contracts Register, or an appropriate national,

- regional or other collaborative contract, Framework Agreement or Dynamic Purchasing System is available for use, by reference to the CPT;
- e. check whether any employee, either of the Council or of a service provider, may be affected by any transfer arrangement and ensure that any Transfer of Undertaking (Protection of Employment) (“TUPE”) issues are considered and obtain legal and HR advice;
  - f. for procurement processes with a Total Contract Value at and above £25,000 the Officer must conduct the procurement activity in conjunction with a certified Procurement Officer of the CPT; and
  - g. for procurement processes with a Total Contract Value at and above EU Threshold there must be an accompanying procurement sourcing strategy in line with section 13. *The procurement sourcing strategy.*

#### **4. Procurement Officer responsibilities**

- 4.1. All Officers employed within the CPT will complete the Passport to Procure training, which is available through the Learning Centre. Additional and specialist training may also be required in more specialist procurement roles.
- 4.2. Once the appropriate training has been completed those Officers will be:
  - a. certified as a Procurement Officer
  - b. approved to complete specific procurement activities.
- 4.3. Officers who have not undertaken the relevant training are not permitted to undertake procurement activity on behalf of the Council without prior consultation with a certified Procurement Officer.

#### **5. Member responsibilities**

- 5.1. The Member must:
  - a. comply with and ensure that Officers comply with these Rules and Financial Instructions;
  - b. comply with the Relevant Legislation;
  - c. ensure that any persons or organisations acting on behalf of the Council also fully comply;
  - d. take account of all necessary legal, financial, procurement, technical and any other professional advice; and
  - e. comply with the Members’ Code of Conduct.

#### **6. Prevention of corruption and collusion**

- 6.1. All Officers have a duty in law to avoid any form of behaviour that might distort or restrict competition, or call in to question the award of a Contract.

- 6.2. Officers must always comply with the Council's standards of conduct and must not offer, promise, give or receive any gift or reward in respect of the award or performance of any Contract.
- 6.3. Officers are advised that any inappropriate behaviour that is deemed contrary to the Bribery Act 2010, the Fraud Act 2006 and any amending legislation, and all legislation relating to money laundering may be dealt with as a breach of the Council's standards of conduct and in certain instances will be treated as gross misconduct and give rise to action under the Council's disciplinary policy and procedure, such as dismissal. Such activity may also be reported to the police.
- 6.4. Officers are advised to take practical steps to reduce the risk of anti-competitive behaviour, as highlighted by the Office of Fair Trading:
  - a. include non-collusion clauses in Contracts;
  - b. ensure sufficient credible Candidates, where practicable;
  - c. identify and investigate for suspicious bidding patterns; and
  - d. keep notes of all discussions with Candidates.

## **7. Conflicts of interest**

- 7.1. All Officers and Members and key stakeholders involved in a procurement exercise must declare any conflicts of interests relating to the procurement activity where they, or their spouse or civil partner, or person with whom they are living as husband and wife or civil partner, have a vested interest that could conflict with the best interests of the Council.
- 7.2. Where a conflict of interest exists the Officer shall ensure that appropriate and sufficient mitigation(s) are put in place to ensure that such conflicts do not compromise the outcome of the procurement exercise.
- 7.3. Officers shall maintain a record of all declarations of interest and mitigations in a procurement exercise as notified by Officers and Members and shall return the declarations of interest record to the CPT. Further advice and guidance can be obtained from the CPT.

## **8. Localism Act 2011**

- 8.1. Under the Localism Act 2011<sup>[1]</sup>, and any amending legislation, community organisations can submit to local authorities an expression of interest to run local services, commonly known as the Community Right to Challenge.

- 8.2. If such an expression of interest is accepted by the Council this will trigger procurement or contracting activity, which is subject to these Rules.

## **SECTION B: PRE-PROCUREMENT**

### **9. Market engagement**

- 9.1. The Officer may, prior to commencing the procurement process, consult potential Candidates in general terms about the nature, level and standard of the supply and Contract and seek market views and intelligence that can be used in the planning and conduct of the procurement process provided that this does not result in the violation of the Treaty Principles, prejudice any other interested supplier/s not consulted and/or have the effect of distorting competition, which might manifest itself as:
- a. a conflict of interest;
  - b. evidence of collusion; or
  - c. a situation which it is incapable of being resolved as a result of providing information to other potential Candidates.
- 9.2. The Officer shall take appropriate measures to ensure that competition is not distorted during the procurement process, including:
- a. communicating to all Candidates any relevant information provided to potential Candidates consulted as part of market engagement activities; and
  - b. fixing adequate time limits for the receipt of Tenders, once the procurement process has been commenced.
- 9.3. The Officer shall take advice from the CPT to ensure that the proposed method of engaging the market or particular potential Candidates does not preclude them from participating in any subsequent procurement activity so as to ensure that the approach does not undermine Best Value, lead to the award of a dissatisfactory Contract or increase the risk of a procurement legal challenge.
- 9.4. Suppliers consulted during market engagement activities shall only be excluded from the procurement process where there are no other means to ensure compliance with this section in its entirety. Potential Candidates must be given the opportunity to prove that their involvement in market engagement activities is not capable of distorting competition. Further advice can be obtained from the CPT.

### **10. Pre-procurement authorisations**

- 10.1. Officers must ensure, before entering in to any process that will or may result in the incurring of any expenditure for the supply of Goods, Services or Works, be it capital or revenue, that:
- a. adequate financial provision is included in the Council's approved revenue budget or capital programme and that such expenditure continues to be available in accordance with the Financial Regulations;
  - b. the Council does not already have an available and appropriate existing Corporate Contract, Framework Agreement or Dynamic Purchasing System;
  - c. there is no other available and appropriate Contract, Framework Agreement or Dynamic Purchasing Systems that has been procured on the Council's behalf:
    - (i) through collaboration with other public bodies, where a competitive process has been followed that complies with the rules of the lead organisation and any Relevant Legislation, but which does not necessarily comply with these Rules; or
    - (ii) by a regional or national contracting authority or buying consortia where the process has been conducted in compliance with any Relevant Legislation; and
  - d. the Council is not already undertaking a procurement process that is within the scope of the proposed procurement;
  - e. all proposed expenditure is reported as a Non Key Decision Report.
- 10.2. Procurement processes may only be carried out once the Non Key Decision Reports has been countersigned by the appropriately empowered officer as set out in the Council's Scheme of Delegation.
- 10.3. The Officer must consult with the CPT prior to preparing the Non Key Decision Report.

## **11. Total Contract Value**

- 11.1. The Total Contract Value is calculated as the whole of the value or estimated value of the Contract as follows:
- a. the total amount payable, exclusive of VAT, as estimated by the Council and including any additional options, lots, renewals and/or extensions;
  - b. where the Contract period is indefinite or uncertain, the value shall be calculated on the basis that the Contract will be for a period of four years and be based on the value of contracts of the same or similar type awarded during the preceding period;
  - c. the estimated value of a Framework Agreement or Dynamic Purchasing System shall be the total value, exclusive of VAT, of all of the Contracts that may be awarded against that Framework Agreement or Dynamic Purchasing System;



- d. the value of a Concession Contract shall be a best estimate of the financial value to the Contractor that shall be made over the life of the arrangement;
- e. the estimated value of an Innovation Partnership shall be the total value, exclusive of VAT, of the research and development activities to take place during all stages of the envisaged partnership, as well as the Goods, Services or Works to be developed and procured at the end of the envisaged partnership.

- 11.2. The general rules when calculating the Total Contract Value are as follows:
- a. purchases of the same or similar type must be aggregated wherever practicable. The value of the Contract shall not be calculated with the intention of excluding it from the scope of the Rules;
  - b. where there is a common requirement across the Council, the Total Contract Value shall be the aggregate of all purchases across the whole Council;
  - c. a Contract shall not be sub-divided with the effect of preventing it from falling within the scope of the Rules; and
  - d. the estimated value shall be calculated as at the moment at which the advertisement is sent or when the Council commences the procurement procedure, whichever is later, unless;
  - e. the estimated value at the point that a Concession Contract to which the Relevant Legislation applies is awarded is more than 20% higher than the previous estimate, in which case the higher value applies.

## 12. Thresholds

- 12.1. The table below sets out the Council's competition requirements. Where the Total Contract Value is within the range of values in the second column, the award procedure and advertising requirements in the third and fourth columns must be followed.

<b>Contract type</b>	<b>Total Contract Value</b>	<b>Procurement process</b>	<b>Advertising requirements</b>	<b>Process guidance</b>
Goods, Services and Works	Up to and including £25,000	Must demonstrate Best Value by following the procurement process for lower value purchases	None	<b>See section 21. Procurement process</b>
Goods and Services	Over £25,000 but less than	Quick Quote via the Council's Electronic	Optional	<b>See section 22. Quick Quote</b>

	£75,000	Tendering System		
Works	Over £25,000 but less than £150,000			
Goods and Services	Over £75,000 but less than the EU Threshold	Invitation to Tender via the Council's Electronic Tendering System	Open advertisement on the Council's Electronic Tendering System and in Contracts Finder	<b>See section 23. Procurement processes requiring Invitations to Tender</b>
Works	Over £150,000 but less than the EU Threshold			
Goods, Services and Works	At and above the EU Threshold	Invitation to Tender as per the Relevant Legislation and via the Council's Electronic Tendering System	Open advertisement on the Council's Electronic Tendering System, in Contracts Finder and in the OJEU	<b>See section 24. Procurement processes over the EU Threshold</b>

### 13. The procurement sourcing strategy

- 13.1. For procurement processes with a Total Contract Value in excess of the EU Threshold the Officer must consult with the CPT to develop the procurement sourcing strategy.
- 13.2. For those procurements falling within the Light Touch Regime, the EU Threshold for Goods and Services shall apply.
- 13.3. The procurement sourcing strategy must, as a minimum, appraise a proposed procurement in a manner commensurate with its complexity, risk and value, by:
- a. taking into account the requirements from any relevant Best Value review;
  - b. taking in to account any lessons learned from any market engagement activities and/or audit findings;
  - c. defining the key commercial principles, objectives of the procurement, taking into account user requirements and all Relevant Policy and Relevant Legislation;
  - d. considering any related risks and impacts;
  - e. considering the need to obtain specific assurances regarding any incumbent contractors business continuity plans and arrangements;
  - f. appraising the need for the expenditure and its priority;

- g. considering all of the associated costs, to include initial purchase costs, operating and maintenance costs, costs of associated consumables, any associated training costs and the cost of disposal;
- h. taking in to account any tax or VAT issues that may arise;
- i. when the purchase of new Goods is proposed, assessing the alternative options for repair, re-use or recycling; and
- j. considering all means of achieving the anticipated outcomes.

13.4. The procurement sourcing strategy shall result in clear recommendations, as follows:

- a. the proposed scope, key commercial principles and the procurement route to be followed;
- b. the relevant evaluation criteria, including the MEAT ratios;
- c. the relevant timescales;
- d. the means by which the Contract shall be monitored and managed; and
- e. the resources required.

13.5. The procurement sourcing strategy shall be signed off by the Officer and CPT.

13.6. Where a change is required to a procurement sourcing strategy that has already been signed off, such changes shall be incorporated in as a variation to the original, agreed between the parties and signed off by the Officer and CPT.

13.7. A template procurement sourcing strategy can be obtained from the CPT.

## **14. Relevant Legislation**

14.1. When planning and preparing all procurement and contracting activities the Officer shall have regard to the Relevant Legislation, including, but not limited to, the following:

- a. Public Contracts Regulations 2015 (PCR 2015); [\[2\]](#)
- b. Concession Contracts Regulations 2016 (CCR 2016); [\[3\]](#)
- c. Public Services (Social Value) Act 2012; [\[4\]](#)
- d. Freedom of Information Act 2000; [\[5\]](#)
- e. General Data Protection Regulation (GDPR) and the Data Protection Act 1998; [\[6\]](#)
- f. Equality Act 2010; [\[7\]](#)
- g. Modern Slavery Act 2015; [\[8\]](#)
- h. Transfer of Undertakings (Protection of Employment) Regulations 2006 [\[9\]](#), and
- i. any industry or sector specific legislation pertaining to the subject matter of the Contract.

- 14.2. The aims and objectives outlined in the Relevant Legislation shall, where appropriate, be incorporated in to the procurement sourcing strategy, award methodology and terms and conditions of contract.
- 14.3. The Officer shall consult with the CPT for guidance when considering Sustainable Procurement and Social Value within their procurement and contracting activities.

## **15. Relevant Policy**

- 15.1. When planning and preparing all procurement and contracting activities the Officer shall have regard to the Council's Relevant Policy and duties, including, but not limited to, the following:
- a. the County Plan;
  - b. Value for Money Strategy;
  - c. Sustainable Procurement;
  - d. Social Value Policy;
  - e. Fairness and Equality for All;
  - f. Medium Term Financial Plan; and
  - g. the relevant Service Plan.
- 15.2. The aims and objectives outlined in the Relevant Policy shall, where appropriate, be incorporated in to the procurement sourcing strategy, award methodology and terms and conditions of contract.
- 15.3. The Officer shall consult with the CPT for guidance when considering Sustainable Procurement and Social Value within their procurement and contracting activities.

## **16. Collaborative procurement**

- 16.1. Where the Council takes the lead procurement role in a collaborative procurement these Rules shall apply, as a minimum.
- 16.2. No officer shall take part in or oblige the Council to take part or lead in a collaborative procurement without the prior agreement of the Head of Commercial and Procurement.
- 16.3. Where another public body takes the lead procurement role the rules of the lead organisation and any Relevant Legislation shall apply.
- 16.4. Where the Council enters in to any formal collaborative procurement arrangements any related collaboration agreement must protect the Council to a level proportionate to the complexity, risk and value involved, whilst at the same

time providing the basis for the collaborative approach and delivery of Best Value. As a minimum the collaboration agreement should clearly state:

- a. the nature and extent of the arrangement;
- b. legal roles and responsibilities;
- c. arrangements for governance, accountability and dispute resolution;
- d. the exit strategy;
- e. the auditing arrangements;
- f. the cost sharing mechanisms; and
- g. the process for the induction of new partners.

- 16.5. Where the Council takes the lead procurement role in a collaborative procurement the Officer shall prepare such a collaboration agreement and ensure that it is countersigned by all partner organisations.
- 16.6. Where no such formal collaboration agreement exists the Officer must consider how the arrangements meet the requirements of these Rules, which must be documented and approved by the appropriately empowered officer as set out in the Council's Scheme of Delegation.

## **SECTION C: THE PROCUREMENT PROCESS**

### **17. Framework Agreements**

- 17.1. A Framework Agreement is an agreement between one or more contracting authorities (bodies governed by public law) and one or more suppliers, the purpose of which is to establish the terms governing Contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. Framework Agreements may be established by the Council, or by other public bodies, or public sector buying consortia, as arrangements through which the Council, along with other public bodies, may make specific purchases.
- 17.2. The term of a Framework Agreement must not exceed four years. There must be one (single-provider framework), or more than two (2) (multi-provider framework) suppliers awarded a place on a Framework Agreement.
- 17.3. When the Council has concluded a Framework Agreement with more than one supplier or seeks to meet its requirements through an already established Framework Agreement a Contract may be awarded:
- a. by the application of the terms laid down in the Framework Agreement without re-opening competition; or
  - b. by 'further competition' between each capable supplier in full accordance with the Relevant Legislation.

- 17.4. The Officer may not select more than one Framework Agreement to procure a single Contract and only suppliers that appear on the Framework Agreement may be approached to provide the Contract.
- 17.5. Where expressly permitted by the Framework Agreement Contracts may be awarded beyond the life of a Framework Agreement provided that such Contracts are not awarded improperly or in a way that seeks to distort competition. As an example it would serve to distort competition to award a Contract that significantly exceeded the life of the Framework Agreement where it was not common practice or expected by the market to do so or where a Contract is awarded for a significant period towards the end of the term of the Framework Agreement.
- 17.6. When a further competition takes place for Goods, Services or Works, that exceeds the EU Threshold the Standstill Period shall apply.

## **18. Dynamic Purchasing Systems**

- 18.1. A Dynamic Purchasing System is similar to a Framework Agreement, save for the fact that it is operated as a completely electronic process, additional suppliers can be added throughout the life of the arrangement and the term can be for a period that is proportionate to the nature of the Goods, Services or Works to be procured under it.
- 18.2. Dynamic Purchasing Systems may be established by the Council, or by other public bodies, or public sector buying consortia, as arrangements through which the Council, along with other public bodies, may make specific purchases.
- 18.3. In opening up access to suppliers to the Dynamic Purchasing System the officer must:
- a. offer unrestricted, direct and full access to the Procurement Documents by electronic means at all times throughout the life of the Dynamic Purchasing System;
  - b. allow new applications to be submitted throughout the life of the Dynamic Purchasing System;
  - c. complete the evaluation of a newly submitted application within ten days of its receipt;
  - d. admit to the Dynamic Purchasing System all new suppliers that satisfy
  - e. the Selection Criteria, and
  - f. notify suppliers of their admission to the Dynamic Purchasing System or rejection of their application.
- 18.4. In awarding a Contract under the Dynamic Purchasing System the Officer must:

- a. place an advertisement for the Contract to all suppliers admitted to the Dynamic Purchasing System or to those admitted to a specific lot, where relevant;
- b. seek Tenders from suppliers and award the Contract in accordance with the Relevant Legislation.

## **19. Use of Framework Agreements and Dynamic Purchasing Systems**

- 19.1. Where a Framework Agreement or Dynamic Purchasing System has been approved as suitable by the CPT the Officer must use it for the making of the proposed purchase.
- 19.2. The use of a Framework Agreement or Dynamic Purchasing System may be appropriate where:
  - a. Quotations or Tenders are regularly obtained for the same or similar types of Goods, Services or Works; and
  - b. it is not practical or appropriate that the Goods, Services or Works in question be aggregated into a single requirement and/or competed under one procurement; and
  - c. the Total Contract Value of the Goods, Services or Works, if aggregated, would exceed the EU Threshold.
- 19.3. Where the Council seeks to establish a Framework Agreement or Dynamic Purchasing System it shall be let and used in full accordance with the Relevant Legislation and terms of the Framework Agreement or Dynamic Purchasing System.

## **20. Standard Procurement Documents**

- 20.1. The Officer must use standard Procurement Documents or relevant Framework Agreement or Dynamic Purchasing System documents to conduct any procurement or contracting activity that will or may result in the incurring of any expenditure for the supply of Goods, Services or Works.
- 20.2. Standard Procurement Documents are stored and maintained by the CPT and can be obtained in consultation with a certified Procurement Officer.
- 20.3. Where it is necessary to vary the standard Procurement Documents or relevant Framework Agreement or Dynamic Purchasing System documents the Officer must consult with the CPT.

20.4. Where it is necessary to vary the standard terms and conditions of contract or relevant Framework Agreement or Dynamic Purchasing System documents the Officer must consult with Legal Services.

## **21. Procurement process for lower value purchases<sup>1</sup>**

21.1. For Contracts up to and including the Total Contract Value of £25,000, where there is a suitable Framework Agreement, Dynamic Purchasing System or corporate Contract approved by the CPT that Framework Agreement, Dynamic Purchasing System or corporate Contract shall be used, provided that such a course of action achieves the principles of Best Value.

21.2. Where no suitable Framework Agreement, Dynamic Purchasing System or corporate Contract is available then achieving Best Value is the primary objective and the Officer is required by these Rules to achieve a minimum of one written Quotation to demonstrate compliance.

21.3. Where compliance with the principle of Best Value cannot be demonstrated by seeking one written Quotation, the Officer shall seek more than one and sufficient to demonstrate compliance.

21.4. The Officer may choose to either:

- a. place an order with the selected supplier on the basis of a pre-quoted price (such as in a supplier's catalogue) having satisfied themselves that the price to be paid represents Best Value; or
- b. select a minimum of one potential Candidate to be invited to submit a Quotation.

21.5. Where the Officer is unable to select a potential Candidate and/or demonstrate Best Value the procedure set out at *section 22. Quick Quote* must be followed.

21.6. Acceptance will be notified to the successful supplier by issue of a Purchase Order. The Purchase Order must refer to the Council's standard terms and conditions of contract, except for where the complexity of the Contract requires more bespoke terms, in which case the Purchase Order shall make separate reference to these.

21.7. Unsuccessful Candidates shall be notified and, at their request, shall be given the reason why they were unsuccessful without breaching the commercial confidentiality of other Candidates.

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<sup>1</sup> A flowchart is provided to aid understanding, page 48



21.8. The Officer must document their decision-making process to demonstrate compliance with this *section 21. Procurement process*.

21.9. The Officer must inform the CPT of the Contract details, such that a record can be made on the Council's Contracts Register.

## **22. Quick Quote<sup>2</sup>**

22.1. For Contracts over the Total Contract Value of £25,000 but less than £75,000 for Goods and Services or £150,000 for Works where there is a suitable Framework Agreement, Dynamic Purchasing System or corporate Contract approved by the CPT that Framework Agreement, Dynamic Purchasing System or corporate Contract shall be used.

22.2. Where no suitable Framework Agreement, Dynamic Purchasing System or corporate Contract is available then achieving Best Value remains the primary objective and the Officer is required by these Rules to achieve a minimum of three Quotations via the Quick Quote process on the Council's Electronic Tendering System.

22.3. Quotations must be sought inviting at least three Candidates registered on the Electronic Tendering System for that type of supply.

22.4. The Officer must not include two stages within a procurement of this nature (Selection Questionnaire and ITT).

22.5. In the event that no suitable Candidates can be found on the Council's Electronic Tendering System the Officer may choose to place an advertisement via the system and in Contracts Finder so as to attract appropriate Candidates to bid.

22.6. If the Officer cannot obtain three Quotations the Officer must satisfy themselves that they have achieved Best Value and must seek approval from the appropriately empowered officer as set out in the Council's Scheme of Delegation. Justification and approval to proceed must be recorded and available for inspection.

22.7. The Procurement Documents must include:

- a. the Council's standard terms and conditions of contract, the standard form of contract and/or bespoke terms;
- b. the specification;
- c. the pricing schedule;
- d. the ordering procedures;

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<sup>2</sup> A flowchart is provided to aid understanding, page 49

- e. commercially confidential information schedules;
- f. completion requirements;
- g. the Selection Questionnaire;
- h. the Award Criteria;
- i. the submission requirements; and
- j. a named contract manager.

- 22.8. Acceptance will be notified to the successful supplier by issue of a Purchase Order. The Purchase Order must refer to the Council's standard terms and conditions of contract, except for where the complexity of the Contract requires more bespoke terms, in which case the Purchase Order shall make separate reference to these.
- 22.9. Unsuccessful Candidates shall be notified and, at their request, shall be given the reason why they were unsuccessful without breaching the commercial confidentiality of other Candidates.
- 22.10. A Contract award record must be made on the Council's Contracts Register and Contracts Finder.

### **23. Procurement processes requiring Invitations to Tender<sup>3</sup>**

- 23.1. For Contracts over the Total Contract Value of £75,000 for Goods and Services or £150,000 for Works but less than the EU Threshold where there is a suitable Framework Agreement or Dynamic Purchasing System approved by the CPT that Framework Agreement or Dynamic Purchasing System shall be used.
- 23.2. Where no suitable Framework Agreement or Dynamic Purchasing System is available the Officer is required by these Rules to invite Tenders from any and all qualified Candidates by advertising the opportunity via the Council's Electronic Tendering System and in Contracts Finder.
- 23.3. The Officer must not include two stages within a procurement of this nature (Selection Questionnaire and ITT).
- 23.4. The advertisement must include:
- a. the time period within which interested parties may express an interest in Tendering; and
  - b. the method by which such interest shall be expressed.
- 23.5. An Invitation to Tender shall be sent to all parties who have expressed an interest, specifying a reasonable period for Tenders to be returned.

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<sup>3</sup> A flowchart is provided to aid understanding, page 50

- 23.6. The Procurement Documents must include:
- a. instructions to Candidates;
  - b. the Council's standard terms and conditions of contract, the standard form of contract and/or bespoke terms;
  - c. form of tender;
  - d. certificate of non-collusion;
  - e. the specification;
  - f. the pricing schedule;
  - g. commercially confidential information schedules;
  - h. completion requirements;
  - i. the Selection Questionnaire;
  - j. the Award Criteria;
  - k. the submission requirements; and
  - l. a named contract manager.
- 23.7. The successful supplier and unsuccessful Candidates shall be notified of the outcome by issue of a letter sent electronically via the Council's Electronic Tendering System. Unsuccessful Candidates shall at their request be given the reason why they were unsuccessful without breaching the commercial confidentiality of other Candidates.
- 23.8. A Purchase Order must be raised.
- 23.9. A Contract award record must be made on the Council's Contracts Register and Contracts Finder.

## **24. Procurement processes over the EU Threshold<sup>4</sup>**

- 24.1. For Contracts at and above the EU Threshold where there is a suitable Framework Agreement or Dynamic Purchasing System approved by the CPT that Framework Agreement or Dynamic Purchasing System shall be used.
- 24.2. Where no suitable Framework Agreement or Dynamic Purchasing System is available the Officer is required by these Rules to invite Tenders from any and all qualified Candidates by advertising the opportunity via the Council's Electronic Tendering System, in Contracts Finder and in the OJEU.
- 24.3. In most cases, the Open procedure, Restricted procedure or Competitive Procedure with Negotiation shall be used, but in certain specialist cases, the Negotiated Procedure without Prior Publication, Competitive Dialogue procedure or Innovation Partnership procedure shall apply. Advice on which procedure is

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<sup>4</sup> A flowchart is provided to aid understanding, page 51

appropriate to the specific case must be sought from the CPT in conjunction with Legal Services.

- 24.4. In all cases the Relevant Legislation shall be followed to conduct the procurement and contracting activity.
- 24.5. The Procurement Documents must include:
- a. instructions to Candidates;
  - b. the Council's standard terms and conditions of contract, the standard form of contract and/or bespoke terms;
  - c. form of tender;
  - d. certificate of non-collusion;
  - e. the specification;
  - f. the pricing schedule;
  - g. commercially confidential information schedules;
  - h. completion requirements;
  - i. the Selection Questionnaire;
  - j. the Award Criteria;
  - k. the submission requirements;
  - l. any other requirements as mandated by the Relevant Legislation; and
  - m. a named contract manager.
- 24.6. The successful supplier and unsuccessful Candidates shall be notified in accordance with the Relevant Legislation and a Standstill Period shall be observed.
- 24.7. A Purchase Order must be raised.
- 24.8. A Contract award record must be made on the Council's Contracts Register, in Contracts Finder and in the OJEU.

## **25. Light Touch Regime**

- 25.1. Certain Services Contracts, as defined in the Relevant Legislation, are not subject to its full rigour. However, the Council will remain bound by the Treaty Principles and therefore Officers must ensure that the procedure used is compliant in all respects.
- 25.2. As a minimum the Officer must invite Tenders from any and all qualified Candidates by advertising the opportunity via the Council's Electronic Tendering System, in Contracts Finder and in the OJEU.

25.3. Where the Officer believes that their Contract falls within the Light Touch Regime they must consult with the CPT prior to commencing any procurement or contracting activity.

## **26. Selection Criteria**

26.1. The Selection Questionnaire shall be used to assess a Candidate's ability to meet the Council's requirements or minimum standards of suitability, capability, legal status or financial standing.

26.2. Subject to this *section 26. Selection Criteria* for all Contracts over the Total Value of £25,000 the Officer shall include the Selection Questionnaire within the Procurement Documents.

26.3. For Contracts with a Total Contract Value of less than or equal to £25,000 the Officer may choose to include the Selection Questionnaire within Quotations and may take advice from the CPT where necessary.

26.4. In any case where the Selection Questionnaire is used its use must be relevant and proportionate to the subject matter of the Contract (going no further than is needed to achieve the Council's objective). In particular, where the Total Contract Value is less than the EU Threshold, the Officer must make an assessment of the requirements of the Contract and decide how far it would be appropriate to use any or all of the questions in the Selection Questionnaire.

26.5. Where the Total Contract Value is at or above the EU Threshold the questions in Part 3 of the Selection Questionnaire are optional and should be used only if each such question is:

- a. relevant to the subject-matter of the procurement; and
- b. proportionate.

26.6. Selection Criteria must not include:

- a. Award Criteria;
- b. Non-commercial Considerations;
- c. criteria that is not related and proportionate to the subject matter of the Contract.

The Officer shall consult with the CPT for advice and guidance on the appropriate use of the Selection Questionnaire and Selection Criteria prior to issuing the Procurement Documents.

26.7. The selection of Candidates shall only be on the basis of the Selection Questionnaire and only where the Selection requirements are made available to potential Candidates within the Procurement Documents.

26.8. The Officer may reject Candidates that fail against the mandatory and discretionary criteria as detailed within the Selection Questionnaire only in conjunction with the CPT and Legal Services, where relevant.

## **27. Award Criteria**

27.1. The Officer shall include the Award Criteria within the Procurement Documents.

27.2. The Award Criteria shall be used to assess a Candidate's ability to deliver the Council's requirements under the Contract, achieving Best Value.

27.3. The Contract shall be awarded to the Candidate whose Tender best meets the Award Criteria.

27.4. Contract Award must be made on the basis of MEAT, taking criteria that are proportionate to and linked to the subject matter of the Contract, which might include:

- a. quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
- b. organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract;
- c. after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion; and
- d. whole life costs (the initial price, running costs, maintenance, disposal, etc. for the duration of the Contract).

27.5. The Officer shall consult with the CPT for advice and guidance on the appropriate use of the Award Criteria prior to issuing the Procurement Documents.

27.6. For Quotations up to and including Total Contract Value of £25,000 the successful supplier may be selected on the basis of lowest price.

27.7. The award of the Contract shall only be on the basis of the Award Criteria and only where the Award requirements are made available to potential Candidates within the Procurement Documents.

## **28. Most Economically Advantageous Tender**

28.1. Award Criteria shall be comprised of both commercial and quality considerations, which shall be represented in the Procurement Documents as a ratio of 60:40

weighted in favour of price, although the Officer may vary the given ratio in favour of price.

- 28.2. Where the Officer wishes to vary the given ratio in favour of quality, the Officer must gain the approval of the CPT to do so.
- 28.3. Where the Officer and the CPT is unable to reach an agreement and therefore the Officer fails to gain the CPT's approval, the Officer must develop a business case justifying the deviation and obtain the approval of the Director of Commercial and Business Services.

## **29. Performance bonds and parent company guarantees**

- 29.1. The Officer must consult the Section 151 Officer concerning whether a performance bond is needed where:
  - a. the Total Contract Value is at or above £1,000,000; or
  - b. where it is proposed to make stage or other payments in advance of receiving the whole of the Contract and there is a concern about the stability of the Candidate.
- 29.2. The Officer must consult the Section 151 Officer concerning whether a parent company guarantee is needed where:
  - a. the Total Contract Value exceeds the EU Threshold; or
  - b. the award of the Contract is based on the evaluation of the parent company or there is some concern about the stability of the Supplier.

## **30. Terms and conditions of Contracts**

- 30.1. All Contracts, regardless of value, shall be accompanied either by the Council's:
  - a. standard terms and conditions of contract; or
  - b. the standard form of contract; or
  - c. bespoke terms.
- 30.2. Whilst some of the terms of the Contract are able to be amended or deleted, the following is a list of all of the terms that are deemed to be mandatory and must therefore be included:
  - a. no assignment of the Contract without the written consent of the Council;
  - b. no sub-contracting of the Contract without the written consent of the Council;
  - c. cancellation in the event that gratuities, inducements or any other type of consideration in relation to the Contract are offered to an employee, member or any persons or organisations acting on behalf of the Council;
  - d. compliance with all Relevant Legislation, including, but not limited to:
    - (i) Data Protection Act 1998

- (ii) Freedom of Information Act 2000 and Environmental Information Regulations 2004
  - (iii) Fraud Act 2006
  - (iv) The Equalities Act 2010
  - (v) The Bribery Act 2010
  - (vi) Modern Slavery Act 2015
  - (vii) Legislation pertaining to money laundering;
  - (viii) and any subsequent legislation that seeks to amend or replace the Relevant Legislation;
- e. a statement of the Council's obligations towards its transparency requirements under the Freedom of Information Act 2000;
  - f. compliance to health and safety regulations;
  - g. termination,
    - (i) in the event of bribery or corruption, the Contract must include a clause empowering the Council to terminate the Contract and to recover from the Supplier the amount of any loss resulting from such termination, and
    - (ii) for all Contracts in excess of the EU Threshold, the Contract must include the termination provisions set out in the Relevant Legislation;
    - (iii) to include on termination, the repatriation of personal data to the Council as the data controller;
  - h. indemnity and Insurance;
  - i. protection of personal data – including, where relevant, reference to export of data outside the European Economic Area (Privacy Shield USA) and/or the General Data Protection Regulation (GDPR);
  - j. confidentiality of sensitive commercial information;
  - k. dispute procedure;
  - l. authorised users;
  - m. governing law;
  - n. prompt payment and the obligation for Suppliers to pay their sub-contractors promptly, in accordance with the Small Business, Enterprise and Employment Act 2015;
  - o. employee vetting, where appropriate; and
  - p. where the Contract is for the employment of persons or organisations acting on our behalf, a statement that obliges them to fully comply with these Rules, as per *section 1.5*.

30.3. Where the Contract provides for the appointment of a nominated sub-contractor the Officer will ensure that the terms and conditions of contract are passed to the main contractor in a way that ensure that they are responsible for ensuring that the nominated sub-contractor is subject to and meets the same requirements as the main contractor, including, but not limited to, the following:

- a. the mandatory clauses identified in these Contract Procedure Rules and Standing Orders;



- b. supporting the local economy and promotion of local employment; and
- c. vetting to Enhanced Disclosure level where required.

### **31. Protection of personal data**

- 31.1. Officers must take all reasonable steps, including incorporation of clauses into Contracts with Suppliers, to ensure that the personal data of individuals is protected in accordance with the Data Protection Act 1998, allied legislation and Codes of Practice from the Information Commissioner's Office (ICO). Officers must ensure the Councils' obligations and risks, in respect of personal data, are considered and indemnities are sought where appropriate. More information and guidance can be obtained from Legal Services and the Information Governance Team.

### **32. Confidentiality of sensitive commercial information**

- 32.1. Officers must take all reasonable steps, including incorporation of clauses into Procurement Documents and Contracts with Suppliers, to ensure that the confidentiality of sensitive business information such as details of pricing and trade secrets are protected in accordance with the Relevant Legislation and guidance. Officers must ensure the Councils' obligations and risks, in respect of the business information of both the Council and Suppliers, are considered and indemnities are sought where appropriate. More information and guidance can be obtained from Legal Services and the Information Governance Team.

### **33. Submission, receipt and opening of Tenders**

- 33.1. All Contracts at and above the Total Contract Value of £25,000 shall be submitted electronically through the Council's Electronic Tendering System.
- 33.2. Tenders received after the stated date and time shall not be accepted under any circumstances. For the purposes of these Rules the time will be deemed to be at the first stroke, e.g. noon shall be 12:00:00.
- 33.3. Submissions shall be verified and opened on the Council's Electronic Tendering System by an appropriately empowered Procurement Officer as set out in the Council's Scheme of Delegation.

### **34. Evaluation of Quotations and Tenders**

- 34.1. All submissions received for Contracts at and above the Total Contract Value of £25,000 shall be evaluated in accordance with the pre-determined Selection and Award criteria, as set out in the Procurement Documents.

- 34.2. The Officer shall ensure that subject-matter experts or appropriately experienced Officers evaluate all submissions in accordance with the pre-determined Selection and Award criteria. For procurement processes with a Total Contract Value at and above £25,000 the Officer engage with a certified Procurement Officer of the CPT for assistance in managing the evaluation procedure.
- 34.3. The Officer is obliged to check the arithmetic in compliant submissions. Where arithmetical errors are found they must be notified to the Candidate, who must be requested to confirm or withdraw their submission.
- 34.4. The Officer must notify all Candidates in writing simultaneously and as soon as possible of the intention to award the Contract. Where the Total Value of the Contract is in excess of the EU Threshold then the Relevant Legislation shall be adhered to in respect of the content of the letter and the Standstill Period.
- 34.5. Apart from the debriefing required or permitted by these Rules the confidentiality of submissions and the identity of Candidates must be preserved at all times and information about one Candidate's submission must not be supplied to another.
- 34.6. The results of the Tender evaluation must be recorded and retained on the Tender file.

## **35. Presentations, demonstrations and site visits**

- 35.1. The default position should be not to use presentations or conduct site visits. If, however, it is required this must be declared as part of the Award Criteria in the Procurement Documents. Where there is an aspiration to hold a presentation, demonstration or site visit the Officer must consult the CPT for advice.
- 35.2. Where used, all Candidates must be invited to present or be included in any site visits and the Officer must prepare any questions to be asked of Candidates in accordance with the Treaty Principles and send to them in advance, unless presentations, demonstrations and site visits will be a key part of a complex procurement route, in which case the Officer may invite only shortlisted Candidates to participate ( a complex procurement route shall mean a restricted, competitive procedure with negotiation, competitive dialogue or innovation partnership, as defined by the Relevant Legislation).

## **36. Abnormally low bids**

- 36.1. The Officer may reject a Tender as being abnormally low, but only after they have first:

- a. been presented with the Candidate's commercial information from CPT and consulted with a Procurement Officer;
- b. requested in writing an explanation from the Candidate for those parts of the Tender considered abnormally low;
- c. taken account of the evidence provided in response to such a request;
- d. verified to the Candidate those parts of the Tender considered abnormally low;
- e. and only where the explanation provided by the Candidate does not satisfactorily account for the low price or costs proposed.

36.2. Where the Officer establishes that the Tender is abnormally low because the Candidate has obtained State Aid, the Tender will be rejected on that basis, but only after the Officer has first:

- a. consulted with the Candidate;
- b. consulted with Legal Services; and
- c. where the Candidate is unable to prove that the aid in question is compatible with the regulations governing State Aid.

36.3. Where the Officer rejects a Tender on the basis of its incompatibility with the State Aid regulations they will inform the European Commission, following consultation with the Legal Services and CPT.

## **37. Contracts exceeding the written estimate**

37.1. Where the lowest Quotation or Tender obtained exceeds the threshold under which the procurement activity has been conducted the Officer must consult with the CPT for approval to proceed or restart the process.

## **38. Clarification**

38.1. Seeking clarification of a Tender to Candidates is permitted with the approval of the CPT:

- a. in writing via the Council's Electronic Tendering System;
- b. at a meeting, provided that a written record is made of the meeting; and
- c. in a way that is fair, transparent and equal to all Candidates.

38.2. There must be no significant variation of the Procurement Documents or standard terms and conditions of contract following such clarification.

38.3. Where a clarification results in a fundamental change to the specification or terms and conditions of contract the Contract must not be awarded but re-tendered.

## **39. Post-Tender negotiation**

- 39.1. Discussions with Candidates after submission of a Tender and before the award of a Contract with a view to obtaining adjustments in price, delivery or content must be the exception rather than the rule.
- 39.2. The Officer must seek approval from the CPT to proceed to post-Tender negotiation.
- 39.3. Any approved negotiation must be conducted in line with the relevant Legislation and Treaty Principles.
- 39.4. Negotiations must be conducted by a team of at least two Officers, one of whom must be from a team or department independent to that leading the negotiations, preferably a member of the CPT. Where the second Officer chosen to participate in the negotiations is not a member of the CPT, the Officer must request the CPT's approval of the proposed personnel.
- 39.5. Wherever practicable Officers must ensure that there are recorded minutes of all post-Tender negotiation meetings and that both parties agree actions in writing, which will assist the Council in significantly reducing the risk of successful legal challenges on the grounds of discriminatory negotiation.
- 39.6. Where a post-Tender negotiation results in a fundamental change to the specification or terms and conditions of contract the Contract must not be awarded but re-tendered.

## **40. Electronic auctions**

- 40.1. Electronic auctions may be used as part of the procurement process as a means of driving additional commercial benefits and as part of the Award Criteria.
- 40.2. The use of electronic auctions must be specified within the Procurement Documents and the Award Criteria associated with the auction must be clearly defined.
- 40.3. Where the Council uses an electronic auction to enable Candidates to adjust their Tender price in the light of information from the Tender prices submitted by competing Candidates then all such alterations to Candidates' pricing will be accepted as permitted by the auction process.

## **41. Freedom of Information Act 2000 and Environmental Information Regulations 2002**

- 41.1. There is a presumption that contractual information should be made available for disclosure if requested in accordance with the Freedom of Information Act 2000 and allied legislation unless a relevant exemption is engaged. However, Officers should be aware of; the potentially anti- competitive implications of disclosing detailed contractual information in the period around a procurement process taking place, and the confidentiality specifically applied to some business information identified in some Contract documentation.
- 41.2. Before responding to requests for information the Officer must seek guidance from the Information Request Team, Information Governance Team and Legal Services.

## **SECTION D: CONTRACT AWARD**

### **42. Intention to award a Contract**

- 42.1. For Contracts over the EU Threshold, Officers must allow Candidates a mandatory minimum Standstill Period of ten (10) calendar days for electronic Tenders from notification to all Candidates before entering into a contractually binding agreement with the successful Supplier(s). It is most important that any communication with the preferred Candidate(s) does not constitute a Contract award, conditional or otherwise.
- 42.2. Following any Standstill Period, if appropriate, an OJEU award notice must be placed by the CPT.
- 42.3. All Candidates must be simultaneously notified in writing of the award and all letters to informing them of the outcome of the Tender must comply with the Relevant Legislation.
- 42.4. Additional written or verbal debriefing must not be offered to Candidates. Where debriefing is requested by Candidates the Officer must seek advice from the CPT before responding to the request.
- 42.5. Any complaints, correspondence threatening challenge or formal court proceedings challenging the decision, received from unsuccessful Candidates or other third parties must be immediately submitted to the CPT and Legal Services for review and response.
- 42.6. A Standstill Period is not necessary for Tenders below the EU Threshold or where they have been subjected to the Light Touch Regime. However, the Officer may use their discretion and include such a period as is required. Such discretion shall only be granted where the Officer has consulted with the CPT.

Where the CPT advises that an Standstill Period is necessary to minimise the risk of a legal challenge, the Officer will include the period in the procurement process. In any case, all Candidates must be simultaneously notified in writing of the outcome of the Tender.

- 42.7. Where an unsuccessful Candidates requests debrief information the Officer may use their discretion in deciding whether or not to comply with the request; there is no legal obligation imperative on the Officer to do so for under EU Threshold Tenders.

### 43. Approval to award

- 43.1. Approval to award a Contract, Framework Agreement or Dynamic Purchasing System can only be given as follows:

<b>Total Contract Value</b>	<b>Approval to award</b>	<b>Key Decision/Non Key Decision</b>
At and above £5,000,000	Cabinet or, in case or urgent business need, the Leader	Key Decision
Over £500,000 but less than £5,000,000	Relevant SLT officer(s) or Cabinet Member(s)	Key Decision
Over £250,000 but less than £500,000	Officer scale 6 or above	Key Decision
Over £25,000 but less than £250,000	Officer scale 8 or above	Non Key Decision
Up to and including £25,000	Officer scale 13 or above	Non Key Decision

- 43.2. Where approval is sought to award a Framework Agreement or Dynamic Purchasing System, approval may also be sought to award the subsequent Call-off Contracts as part of the same decision report. Where this is not observed, Officers must seek approval to award Call-off Contracts exceeding the EU Threshold.

### 44. Signing of Contract

- 44.1. Officers must ensure that all the necessary permissions are in place (e.g. funding commitments, licences, and leases) before the Contract is entered into.
- 44.2. All Contracts made on behalf of the Council must be in writing and cannot be made by an email. Officers must ensure that:
- a. for Contracts up to and including the Total Contract Value of £25,000 a Purchase Order referring to the Council's standard terms and conditions of contract; or

- b. for Contracts over the Total Contract Value of £25,000 a Purchase Order and a signed Contract, is in place before any Goods, Services or Works are requested or allowed to begin.

44.3. For Contracts with a Total Contract Value of below than £75,000 for Goods and Services and £150,000 for Works they must always be signed by an Officer with the authority to do so under the Council's Scheme of Delegation. If the Officer with responsibility for the decision to enter the Contract is not available to sign the Contract then another Officer with the equivalent level of authority may sign the Contract or it can be signed by any Officer who has been duly authorised.

44.4. For Contracts with a Total Contract Value at or over £75,000 for Goods and Services and £150,000 for Works (except where section 44.6 of these Contract Procedure Rules and Standing Orders requires that the Contract must be sealed with the common seal of the Council) they must always be signed by two (2) Officers, one of which must have the authority to do so under the Council's Scheme of Delegation. If the Officer with responsibility for the decision to enter the Contract is not available to sign the Contract then another Officer with the equivalent level of authority may sign the Contract. The second signatory must be a Procurement Officer with the authority to do so under the Council's Scheme of Delegation or any Officer acting with appropriate delegated authority.

44.5. The Officer responsible for securing signatures must ensure that the person signing on behalf of the Supplier has the authority to bind it.

44.6. A Contract must be sealed with the common seal of the Council where:

- a. the Council may wish to enforce the Contract more than six (6) years after its end (e.g. construction works); or,
- b. the price paid or received under the Contract is a nominal price and does not reflect the value of the goods, services or works; or
- c. the Total Value is at and above £500,000.

44.7. Where Contracts are completed by each side adding their formal seal, the fixing of the Council's seal must be witnessed by or on behalf of the County Solicitor. Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal and a final completed original copy must be returned to Legal Services for storage. The seal must not be affixed without the appropriate authority in accordance with the Council's Constitution.

## **45. Letters of intent**

45.1. Letters of Intent shall only be used in exceptional circumstances and may only be signed by Officers with delegated authority to do so under the Council's

Scheme of Delegation. Such exceptional circumstances shall only be determined by the CPT in conjunction with Legal Services and as such the Officer must seek advice on their acceptable use.

## **46. Early Termination of Contract**

- 46.1. The date on which the Contract will terminate, and the terms on which the Contract may be terminated early (e.g. for breach of Contract) must be clearly described within the Contract.
- 46.2. Contracts may only be terminated early in accordance with their terms and conditions of contract, with approval in accordance with the Council's Scheme of Delegation.

## **47. Variation, extension, assignment and novation**

### 47.1. Variation

- a. A variation to a Contract may involve:
- (i) a change to the specification,
  - (ii) a one-off item of work or particular service, or
  - (iii) change in terms affecting the Contract.
- b. Variations must not exceed the scope, financial value or duration of the advertised Contract.
- c. Where the Officer considers that a proposed variation may materially change or exceed the specification, price or duration of a Contract, advice must be obtained from the CPT.
- d. Variations to Contracts must be approved and signed by the relevant officers in accordance with the Council's Scheme of Delegation.

### 47.2. Extension

- a. Extensions of Contracts may only be made where:
- (i) there is budgetary provision; and
  - (ii) Best Value can be clearly demonstrated; and
  - (iii) for Contracts below the EU Threshold:
    - the extension is within the scope (description of Goods, Services or Works, duration and Total Contract Value); and
    - there is a provision stipulated in the original Contract for an extension;
    - the extension does not cause the Total Contract Value to exceed the relevant EU Threshold; or



- a waiver request form is completed where no specific provision exists in the Contract;
- (iv) for Contracts at or over the EU Threshold:
- the extension is within the scope (description of Goods, Services or Works, duration and Total Value) of the original Contract; and
  - the original Contract Notice advertised and the Contract permits the extension.
- b. Where the Officer considers that a proposed extension may materially change or exceed the specification, price or duration of a Contract, advice must be obtained from the CPT.
- c. Extensions to Contracts must be approved and signed by the relevant officers in accordance with the Council's Scheme of Delegation.

#### 47.3. Assignment and Novation

- a. In the event of the Officer becoming aware that a Supplier is entering into a change of control, insolvency, bankruptcy, receivership or liquidation the Officer must inform the CPT and Legal Services immediately. The Supplier shall only be permitted to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior written consent of the Council. The Council reserves the right to decline a Supplier that is deemed to be not suitable. If a suitable alternative is not identified the Contract must be re-Tendered.

#### 47.4. General

- a. Any approved variation or extension must be by deed or Contract variation, which will be contractually binding on both parties.
- b. Variations, extensions, assignments and novations must only be signed by officers with the delegated authority to do so by reference to the Council's Scheme of Delegation.
- c. For Contracts with a Total Contract Value exceeding the EU Threshold, any variation or extension to a Contract which in aggregate results in additional costs exceeding 10% of the original contract value or £75,000 (whichever is the greater) shall be subject to the prior approval of an appropriately empowered Officer under the Council's Scheme of Delegation in consultation with the CPT and Legal Services.

- d. For Contracts with a Total Contract Value exceeding the EU Threshold, any variation or extension to a Contract which in aggregate results in:
  - (i) additional costs exceeding 20% of the original contract value or £150,000 (whichever is the greater);
  - (ii) a significant delay in the time for completion; or
  - (iii) significant risks not initially identifiedthis shall be reported at the earliest opportunity to the relevant Cabinet Member and/or Section 151 Officer (where there is a financial implication) and shall be subject to their approval in conjunction with an appropriately empowered Officer under the Council's Scheme of Delegation.
- e. The Officer responsible for securing the signature/s must ensure that the person signing on behalf of the Supplier has authority to bind it.
- f. The Officer is responsible for ensuring that all variations, extensions, assignments and novations are stored with the original signed and dated Contract.

## **48. Records of Tenders and Contracts**

- 48.1. The Officer must keep and maintain records in respect of each Tender and Contract (such records should include the materials pertaining to all of the stages of the procurement cycle: from the time the project begins prior to procurement until the point at which the Contract is signed or a decision is made not to award a Contract).
- 48.2. The Officer shall ensure that original and signed copies of the Contract and Tenders received are safely stored and accessible in the event of a procurement audit or where reference to it needs to be made for contract management purposes. Where electronic versions of Tenders and Contracts are made they shall be stored in the Council's electronic storage and management system.
- 48.3. A Contracts Register shall be held by the CPT with details of Contracts, Framework Agreements or Dynamic Purchasing Systems entered into by the Council. It will be the responsibility of the Officer to ensure that details of Contracts, Framework Agreements or Dynamic Purchasing Systems are provided to the CPT for entering onto the Contracts Register.
- 48.4. The Officer must ensure that originals and copies of all Tender and Contract documentation adhere to the Council's retention schedule.

## **SECTION E: CONTRACT MANAGEMENT**

### **49. Contract manager**

- 49.1. A contract manager must be appointed for all new Contracts and named in the Procurement Documents and Contract.
- 49.2. Contracts shall be managed in accordance with best practice (please refer to the Council's Contract Management Toolkit) in the area of supplier relationship and contract management and contemporary advice and guidance provided by the Commercial Contract Management Team.

### **50. Contract operations manual and plan**

- 50.1. Officers shall ensure that all Contracts with a Total Contract Value over the EU Threshold have a suitable written contract operations manual and plan in place before signing the Contract, which shall be prepared to a level of detail proportionate to the risk and value of the Contract.
- 50.2. As a minimum the contract manager shall monitor the Contract in respect of:
  - a. performance;
  - b. compliance with the specification and terms and conditions of contract;
  - c. cost and Best Value;
  - d. user satisfaction;
  - e. financial standing;
  - f. insurances; and
  - g. licenses and permissions to complete the Contract.

### **51. Risk management**

- 51.1. For all Contracts with a Total Contract Value over the EU Threshold the contract manager must maintain a risk register during the contract period highlighting the risk and mitigation strategy for the Contract and, for identified risks, must ensure contingency or risk mitigation measures are in place.

### **52. Payment**

- 52.1. The contract manager shall make arrangements for the Supplier to receive payment in accordance with the terms and conditions of contract.

### **53. Liquidated and ascertained damages**

- 53.1. Liquidated and ascertained damages must be deducted for all periods of delay in line with the terms and conditions of contract.

## **54. Dispute**

- 54.1. The contract manager shall consult with the Head of Commercial and Procurement and Legal Services when they become aware that any significant dispute or claim may arise in relation to a Contract.
- 54.2. No liability shall be accepted without the approval of the Officer with the delegated authority to do so under the Council's Scheme of Delegation and as set out at *section 43. Approval to award*.
- 54.3. For the purposes of this *section 54. Dispute* significant shall mean

## **55. Exemptions**

- 55.1. These Rules apply to all Relevant Contracts made by or on behalf of the Council except for:
- a. Grants which the Council may receive or make except where the Grant is the form of payment for a Contract for Services where the Council specifies the output or outcomes to be delivered. However, it must be noted that the Officer cannot simply choose to treat procurement as a Grant to deliberately avoid the application of these Rules. Any Officer found to be conducting their procurement activity shall be subject to rule *57. Non-compliance to the Rules*
  - b. acquisition, disposal or transfer of any interest in land;
  - c. Goods, Works or Services procured in a genuinely unforeseeable emergency (e.g. natural disasters such as flooding or fires, immediate changes to legislation) because of a need to respond to events that were beyond the genuine control of the Council. For Contract of this nature that exceeds the EU Threshold the Officer shall consult the CPT as soon as is practical. Any such Contract entered into by the Council must not be for a term of more than six (6) months. It must be noted that not allowing sufficient time to Tender shall not be considered an emergency;
  - d. Contracts for direct employment;
  - e. Contracts for the execution of mandatory works by statutory undertakers, such as utilities providers;
  - f. Contracts between entities within the public sector where such Contracts are to be awarded in accordance with Regulation 12 of the Public Contracts Regulations 2015 or Regulation 17 of the Concession Contracts Regulations 2016 and providing that the Officer has first obtained the advice of the CPT and Legal Services as to the application of the Relevant Legislation;
  - g. Contracts which have been procured on the Council's behalf, which have been approved for use by the CPT;

- h. dealings in the money market or obtaining finance;
- i. Contracts for the appointment of legal counsel or expert witnesses in litigation, arbitration, conciliation or in the preparation of such, but not in transactional or advisory work;
- j. arrangements with Ofsted for the inspection of a school;
- k. Contracts for national subscription services and/or (data) license agreements where the Council's needs are only capable of being met by one Supplier and where the Contract assists the Council in meeting its statutory duties;
- l. Contracts to cover residential and nursing care which the Council has a duty to provide under the relevant legislation, if in the opinion of the Section 151 Officer in conjunction with the CPT, it is considered to be in the Council's interests and demonstrates Best Value.

55.2. All exemptions shall be reported to and recorded by the CPT and shall be authorised by the appropriately empowered Officer under the Council's Scheme of Delegation. For Contracts at and above £75,000 for Goods and Services and £150,000 for Works where an exemption is necessary all such exemption reports shall be reported to the Governance Board.

55.3. Such exemptions are not necessarily exempt from the application of the specific requirements of the Relevant Legislation and specific advice must be sought from the CPT and Legal Services where the Officer is in doubt.

## **56. Waivers**

56.1. Whilst the requirements of these Rules are intended to be followed in respect of all Relevant Contracts the requirement to undertake a competitive tendering exercise may be waived by the CPT and/or Governance Board in the following highly exceptional circumstances:

- a. life or death – there is a significant chance that the life or health of officers, members or the public will be put at real risk;
- b. increased costs / loss of income – the Council will incur significant avoidable costs or lose significant income (significant shall be taken to mean material in the sense that it is either material to the project, the service or the Council);
- c. limited markets – supply of the product or service is demonstrably restricted to a single source of supply; or
- d. reputation – the Council would be criticised for failing to act promptly.

56.2. For Contracts less than £75,000 for Goods and Services and £150,000 for Works where a waiver is necessary the Officer must complete the relevant

waiver request form and seek the approval of an appropriately empowered officer under the Council's Scheme of Delegation and the CPT.

- 56.3. For Contracts at and above £75,000 for Goods and Services and £150,000 for Works where a waiver is necessary the Officer must complete the relevant waiver request form and seek the approval of an appropriately empowered officer under the Council's Scheme of Delegation, Section 151 Officer and the Director of Commercial and Business Services. All such waiver requests shall be reported to the Governance Board.
- 56.4. The Officer is responsible for ensuring that the waiver request forms are duly completed and signed prior to the award of a Contract.
- 56.5. No waiver shall be granted for Contracts over the EU Threshold unless expressly permitted the CPT and Legal services. The officer shall contact the CPT for advice under these circumstances.

## **57. Non-compliance to the Rules**

- 57.1. Officers are required to comply with the Rules at all times.
- 57.2. Officers shall report non-compliance to the Rules to the Governance Board. Governance Board shall be responsible for determining the course of action to be taken in the event of non-compliance.
- 57.3. Where, in consultation with the CPT and Legal Services, it is determined that the breach can be remedied by taking appropriate steps or measures the Officer shall comply with the proposed course of action.
- 57.4. Where the breach has given rise to, or is likely to give rise to illegality or maladministration the Governance Board shall notify the Monitoring Officer.
- 57.5. In the event of illegality or maladministration the Governance Board will determine that the Officer is also in breach of the Council's standards of conduct, which under certain circumstances may be treated as gross misconduct and give rise to action under the Council's disciplinary policy and procedure.
- 57.6. Where the breach gives rise to disciplinary action the Governance Board shall notify the Human Resources and Organisational Development Director.
- 57.7. In the event that these Rules are not complied with, this will not invalidate any Contract entered into by or on behalf of the Council, except where the Relevant Legislation provides to the contrary.

## **SECTION F: OTHER RELEVANT CONSIDERATIONS**

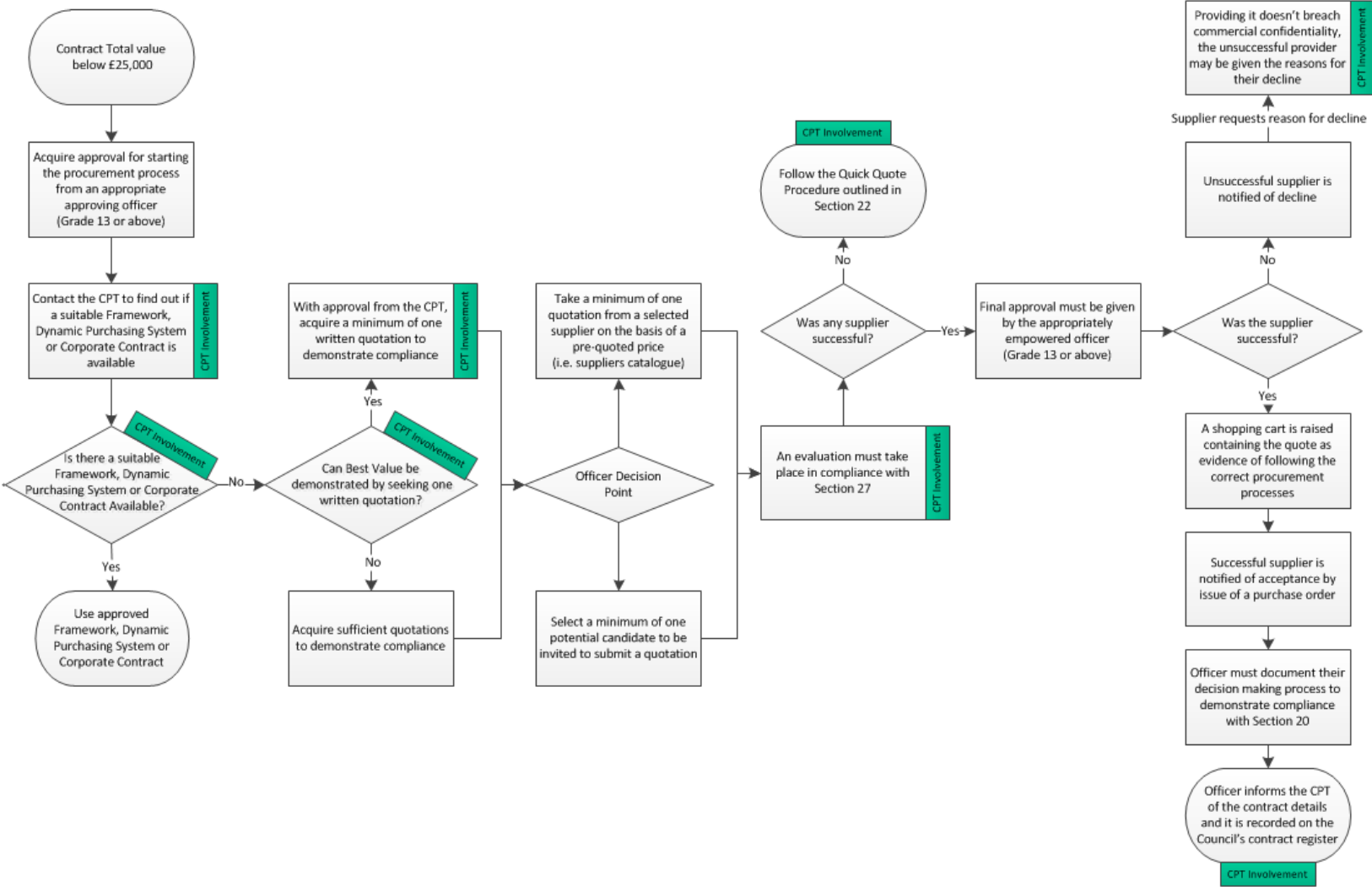
### **58. State Aid**

- 58.1. In all cases where there is a possibility of the Council providing State Aid the Officer must seek the advice of the CPT and Legal Services.

### **59. Development agreements**

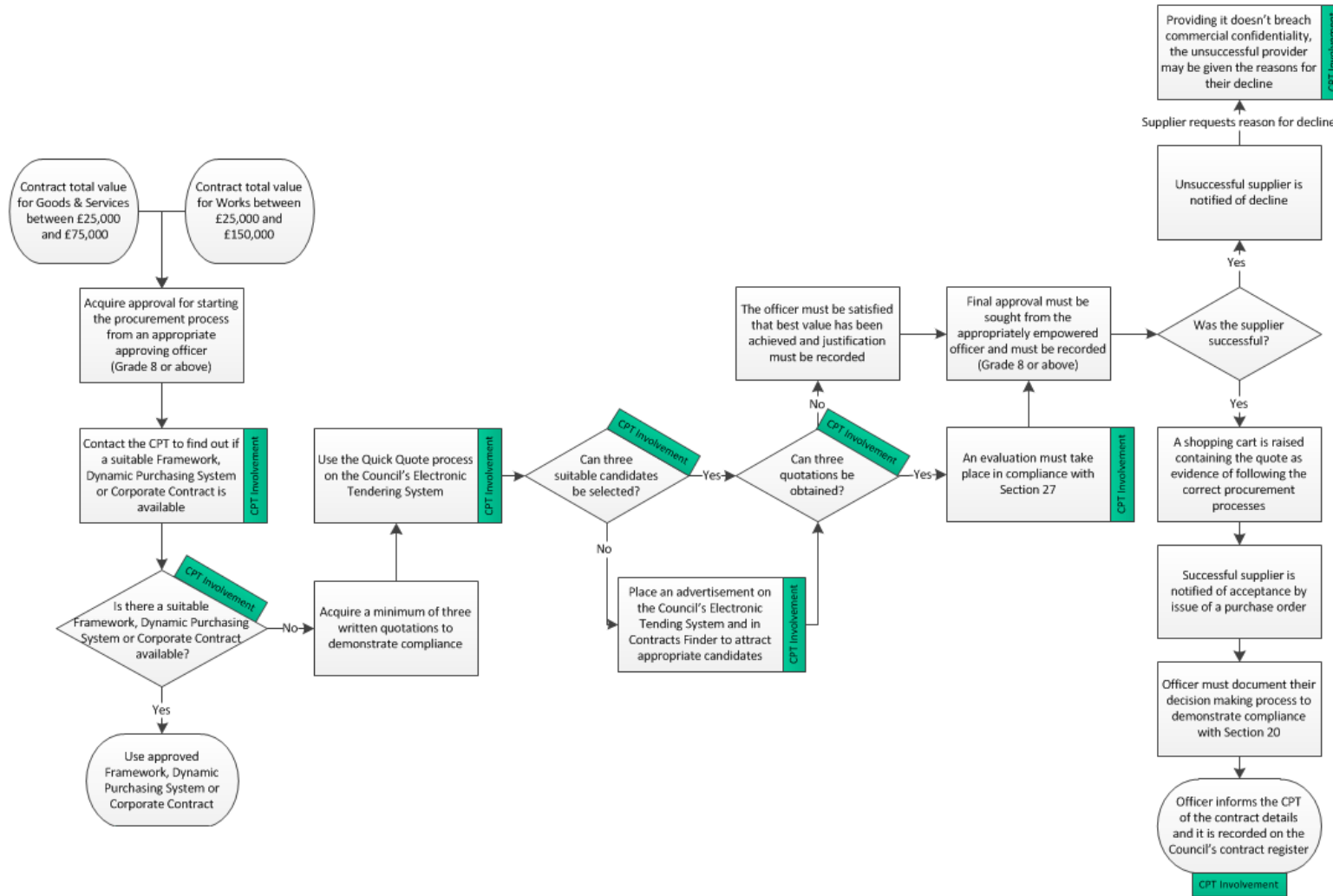
- 59.1. In all cases where there is a possibility of the Council entering a development agreement the Officer must seek the advice of the CPT and Legal Services.

# Flowchart for the procurement process for lower value purchases

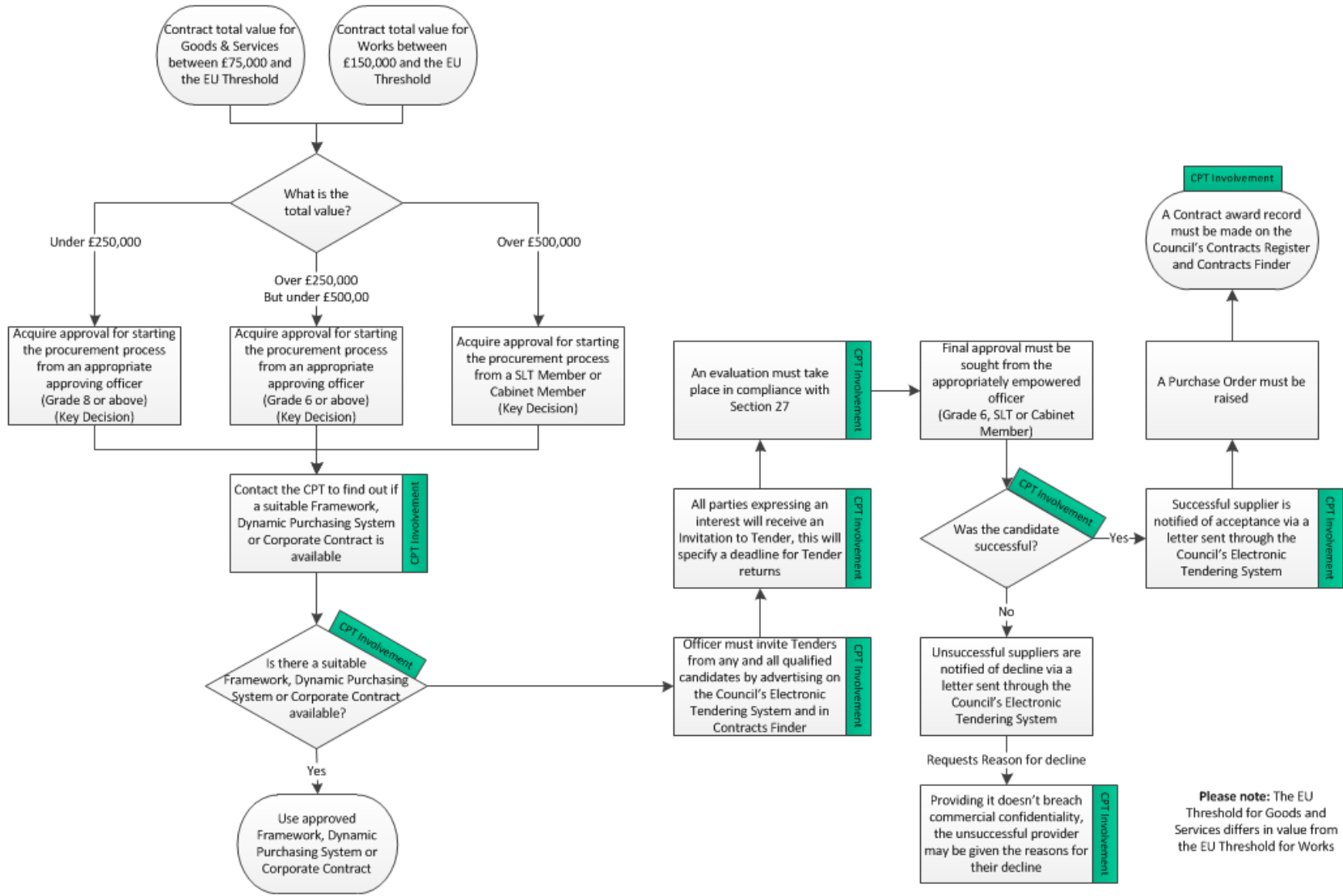




# Flowchart for Quick Quote



# Flowchart for procurement process requiring Invitations to Tender



# Flowchart for procurement process over the EU Threshold

