

# Part I - Contract Procedure Rules

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

## Contents

1.	Definitions.....	4
2.	Introduction .....	14
3.	The Procurement Sourcing Strategy .....	15
4.	Basic principles.....	16
5.	Officer responsibilities .....	17
6.	Procurement Officer responsibilities.....	19
7.	Member responsibilities .....	19
8.	Prevention of corruption and collusion .....	19
9.	Conflicts of interest.....	20
10.	Localism Act 2011.....	21
11.	Market engagement .....	21
12.	Pre-procurement authorisations .....	22
13.	Total Contract Value.....	23
14.	Procurement Thresholds.....	25
15.	Relevant Legislation.....	26
16.	Relevant Policy .....	26
17.	Collaborative procurement.....	27
18.	Use of Framework Agreements and Dynamic Purchasing Systems .....	28
19.	Standard Procurement Documents.....	29
20.	Procurement process for lower value purchases .....	29
21.	Quick Quote.....	30
22.	Procurement processes requiring Invitations to Tender .....	31
23.	Procurement processes over the Procurement Regulations Threshold .....	33

24.	Light Touch Regime.....	34
25.	Selection Criteria.....	34
26.	Award Criteria .....	36
27.	Most Economically Advantageous Tender.....	36
28.	Performance bonds and parent company guarantees .....	37
29.	Terms and Conditions of Contracts .....	37
30.	Protection of personal data .....	39
31.	Confidentiality of sensitive commercial information .....	39
32.	Submission, receipt and opening of Tenders .....	40
33.	Evaluation of Quotations and Tenders .....	40
34.	Abnormally low bids .....	41
35.	Clarification .....	41
36.	Electronic auctions.....	42
37.	Intention to award a Contract .....	42
38.	Approval to award.....	43
39.	Signing of Contract .....	44
40.	Letters of intent.....	46
41.	Early Termination of Contract.....	46
42.	Variation, extension, assignment and novation.....	46
43.	Supplier Resilience.....	48
44.	Waivers .....	48
45.	Exemptions.....	49
46.	Non-compliance to the Rules .....	50
47.	Subsidy control.....	51
48.	Development agreements .....	51

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

## SECTION A: **PRELIMINARY**

### 1. **Definitions**

1.1. In these Contract Procedure Rules and Standing Orders the following words and expressions will have the following meanings assigned to them:

<b>Defined term</b>	<b>Definition</b>
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	Means the optimum balance of cost, efficiency and effectiveness in the delivery of a council function
Executive Member	Shall mean any Councillor appointed to the Executive 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 Executive 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 Procurement Regulations
Competitive Procedure with Negotiation	Shall mean as referred to in regulation 29 of the Procurement Regulations
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 Executive Scheme of Delegation and</li> <li>• regulates the behaviour of individuals and groups through rules of procedure, codes and protocols</li> </ul>
Contract	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
Contracting Authority	Shall mean Somerset Council or any entity over which Somerset Council has control

Contracts Register	Shall mean the Council's repository of Contracts as held on the Council's Electronic Tendering System
Council	Shall mean Somerset Council
Dynamic Purchasing System	Shall mean as referred to in regulation 34 of the Procurement Regulations
Electronic Tendering System	Shall mean the system approved by the Commercial and Procurement team for the purposes of conducting procurement activities electronically
Electronic Signing Software	Shall mean software for the electronic completion of Contracts which complies with the requirements in the Electronic Communications Act 2000
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
Find a Tender Service	Shall mean the web-based portal provided for the purpose of 6organization high value contract opportunities as per the Procurement Regulations <a href="http://www.gov.uk/find-tender">www.gov.uk/find-tender</a>
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 Agreement	<p>Means an arrangement for the provision of funding to cover, in whole or in part, the running costs of an organization whose work complements the Council's policy objectives and where the arrangement has the following characteristics:</p> <ul style="list-style-type: none"> <li>• the funding is provided in order to achieve agreed outcomes</li> <li>• the recipient has no obligation to spend the funding made available under the arrangement</li> <li>• the recipient will have discretion over the spending of that funding within limits agreed between the Council and the recipient of the funding</li> <li>• the recipient will be liable to repay any funding spent outside the agreed limits</li> <li>• the recipient will be required to pay back any unspent funds either at agreed points during or at the end of the arrangement.</li> </ul>
Innovation Partnership	Shall mean as referred to in Regulation 31 of the Procurement Regulations
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 Executive Scheme of Delegation
Legal Services	Shall mean the Council's internal legal advisory department
Light Touch Regime	Shall mean the rules set out in regulations 74 to 76 of the Procurement Regulations regulating the award of Contracts for social and other services
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 Procurement Regulations
Non-commercial Considerations	Shall mean factors that must not be taken into 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

Open Procedure	Shall mean as referred to in Regulation 37 of the Procurement Regulations
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 an Officer that has completed the Passport to Procure training and which is employed to Commercial and Procurement
Procurement Regulations	The Public Contracts Regulations (SI: 2015/102) as amended, updated or replaced
Procurement Regulations Threshold	The values specified in regulation 5 of the Procurement Regulations
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	<p>Shall mean a Contract to which these Rules applies, which includes:</p> <ul style="list-style-type: none"> <li>• the supply or disposal of Goods</li> <li>• the hire, rental or lease of Goods or equipment</li> <li>• the provision of Works and the supply of works materials</li> <li>• the provision of Services including consultancy services</li> <li>• the granting of Works Concessions or Services Concessions Contracts.</li> </ul> <p>But does not include:</p> <ul style="list-style-type: none"> <li>• dealings in the money market or obtaining finance.</li> </ul>
Relevant Legislation	<p>Means:</p> <ul style="list-style-type: none"> <li>• the Procurement Regulations;</li> <li>• the Subsidy Control Act 2022;</li> <li>• the Data Protection Act 1998;</li> <li>• the Freedom of Information Act 2000;</li> <li>• the Environmental Information Regulations 2004;</li> <li>• the Fraud Act 2006;</li> <li>• the Equalities Act 2010;</li> <li>• the Bribery Act 2010;</li> <li>• the Modern Slavery Act 2015;</li> <li>• the Public Services (Social Value) Act 2012;</li> <li>• any legislation pertaining to money laundering;</li> </ul> <p>as amended, updated or replaced.</p>
Relevant Policy	<p>Shall mean the policy referred to in <i>Section 16. Relevant Policy</i> and any documents superseding that referred to</p>
Restricted Procedure	<p>Shall mean as referred to in Regulation 28 of the Regulations</p>

Scheme of Delegation	<p>(The Council and Executive Scheme of Delegation) shall mean the high level overarching scheme contained within the Constitution which set outs delegations to directors.</p> <p>(The Officer Scheme of Delegation) shall mean the scheme which sits underneath the Council and Executive 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</p>
Section 151 Officer	<p>Shall mean the Officer employed in the position of chief finance officer or such Officer as they may duly authorised to act on their behalf</p>
Selection Criteria	<p>Shall mean the Authority's minimum requirements by which the Tenderer is to be assessed as being suitable to deliver the requirements of the contract</p>
Selection Questionnaire	<p>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</p>
Services	<p>Shall mean the supply of time, effort, and/or expertise instead of a tangible product</p>
Services Concession Contract	<p>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</p>

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
Subsidy	Means a subsidy as defined by section 5 of the Subsidy Control Act 2022
Supplier	Shall mean the successful Candidate
Sustainable Procurement	Shall mean the act of adopting social, economic and environmental factors alongside the typical price and quality considerations into the organisation's handling of procurement processes and procedures
Tender	Shall mean the document response from a Candidate in the form required the Invitation to Tender issued by the Council
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 Employment) ("TUPE")	Shall mean the legislation that applies where either a business transfer or a service provision change takes place. The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) apply to protect UK employees when one of these 'relevant transfers' takes place and the business changes to a new owner
Transparency Code	The Local Government Transparency Code 2015

Works	Shall mean the construction of structures of all kinds, such as buildings, highways, bridges, as well as structural renovations, extensions, and repairs
-------	--

## SECTION B: **GENERAL INFORMATION**

### **2. Introduction**

- 2.1. The Local Government Act 1972 section 135 requires the Council to have standing orders for how it enters into contracts. These Contract Procedure Rules (the "Rules") are the standing orders required by the 1972 Act. They form part of the Council's Constitution and are, in effect, the instructions of the Council, to officers and elected members, for entering into contracts on behalf of the Council.
- 2.2. These Rules are the Contracting Authority's (the "Council") rules for the buying, renting and leasing of Goods, Services and Works and apply to all procedures for procuring and entering into Relevant Contracts made by the Council unless otherwise specified herein.
- 2.3. 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 taxpayers and excellent outcomes for its service users.
- 2.4. 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.
- 2.5. These Rules apply to all Officers of the Council and all 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 12. Pre-Procurement Authorisations*).
- 2.6. Officers must also ensure that any persons or organisations acting on behalf of the Council fully comply with these Rules.
- 2.7. 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 ("Commercial and Procurement") for more detailed guidance throughout the procurement process.

- 2.8. The expectation is of compliance to these Rules and in any cases of doubt advice must be sought from Commercial and Procurement. 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 46. Non-compliance to the Rules*).
- 2.9. If upon reading the Rules the Officer discovers a lack of clarity or wishes to ensure their comprehension and compliance, they must consult with Commercial and Procurement for advice and guidance. The Officer shall not be excused from these Rules on grounds of a lack of understanding.
- 2.10. The administration, monitoring and governance of these Rules shall be the responsibility of Commercial and Procurement.

### **3. The Procurement Sourcing Strategy**

- 3.1. For procurement processes with a Total Contract Value in excess of the Procurement Regulations Threshold the Officer must consult with Commercial and Procurement to develop the procurement sourcing strategy.
- 3.2. 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. considering the Social Value sought
  - c. taking in to account any lessons learned from any market engagement activities and/or audit findings
  - d. defining the key commercial principles, objectives of the procurement, taking into account user requirements and all Relevant Policy and Relevant Legislation
  - e. considering any related risks and impacts
  - f. considering the need to obtain specific assurances regarding any incumbent contractors' business continuity plans and arrangements
  - g. appraising the need for the expenditure and its priority
  - h. considering all of the associated costs, to include initial purchase costs, operating and maintenance costs, costs of associated

consumables, any associated training costs, the cost of disposal and the costs of exiting the contract

- i. taking in to account any tax or VAT issues that may arise
- j. when the purchase of new Goods is proposed, assessing the alternative options for repair, re-use or recycling
- k. considering all lawful means of achieving the anticipated outcomes.

3.3. 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
- e. the resources required.

3.4. The procurement sourcing strategy shall be signed off by the Officer and Commercial and Procurement. 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 Commercial and Procurement.

3.5. A template procurement sourcing strategy can be obtained from Commercial and Procurement.

3.6. For those procurements falling within the Light Touch Regime, the Officer must consult with Commercial and Procurement to agree the most appropriate procurement approach, and if a procurement strategy is required.

#### **4. Basic principles**

4.1. 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
- g. ensure that Non-Commercial Considerations do not influence the Award Decision.

4.2. All procurements must comply with the following principles of the Procurement Regulations and UK procurement law and policy:

- a. mutual recognition
- b. non-discrimination
- c. openness and transparency
- d. equal treatment
- e. proportionality.

## **5. Officer responsibilities**

5.1. The Officer is responsible for the commissioning, procurement, mobilisation/transition, contracting activity, Contract, 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
- e. complete mandatory, role specific training, as directed by the

Commercial and Procurement team.

- 5.2. 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 Commercial and Procurement team
  - 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 above £50,000 the Officer must conduct the procurement activity in conjunction with a certified Procurement Officer of Commercial and Procurement
  - g. for procurement processes with a Total Contract Value at and above Procurement Regulations Threshold there must be an accompanying procurement sourcing strategy in line with *Section 3. The procurement sourcing strategy*.
- 5.3. Officers must ensure that the appropriate Governance process for spending approval is followed. Please refer to the Officer Decision Making guidance on the Council's intranet for the latest advice.
- 5.4. Officers must ensure that all commitments to suppliers are made in the form of a valid Purchase Order, prior to delivery of goods and services, consulting Commercial and Procurement to determine the most effective means of ordering and monitoring of spend against contracts. Any exceptions to this must be agreed with Finance and Procurement of be

covered by the PO exemption policy.

## **6. Procurement Officer responsibilities**

- 6.1. All Officers employed within the Procurement team 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. Once the appropriate training has been completed those Officers will be certified as a Procurement Officer and approved to complete specific procurement activities.
- 6.2. Any Council officer proposing to engage in a procurement process for goods or services above £50,000 shall also complete the Passport to Procure training, before being permitted to participate in any procurement activity.
- 6.3. Officers who have not undertaken the relevant training are not permitted to undertake procurement activity on behalf of the Council without prior consultation with the Commercial and Procurement team.

## **7. Member responsibilities**

- 7.1. 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
  - e. comply with the Members' Code of Conduct.

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

- 8.1. 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.
- 8.2. 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.

- 8.3. Officers are advised that any behaviour that is deemed to be in contravention of the provisions of 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. In certain instances this may 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.
- 8.4. 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
  - d. keep notes of all discussions with candidates.

## **9. Conflicts of interest**

- 9.1. All Officers, Members and key stakeholders involved in a procurement exercise must immediately declare in writing to the Head of Commercial and Procurement 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.
- 9.2. Where a conflict of interest exists the Head of Commercial and Procurement, in consultation with Legal Services, shall consider any appropriate mitigation(s) to be put in place to ensure that such conflicts do not compromise the outcome of the procurement exercise, or whether such Officer, Member or key stakeholder must excuse themselves from the procurement.
- 9.3. Commercial and Procurement officers shall maintain a record of all declarations of interest and mitigations in a procurement exercise as notified by Officers, Members and key stakeholders and shall share the declarations of interest record with Legal Services and Democratic Services. Further advice and guidance can be obtained from the Commercial and

Procurement team.

## **10. Localism Act 2011**

- 10.1. Under the Localism Act 2011 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.
- 10.2. 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 C: PRE-PROCUREMENT**

### **11. Market engagement**

- 11.1. 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 Procurement Regulations 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
  - c. a situation which is incapable of being resolved as a result of providing information to other potential candidates.
- 11.2. The Officer shall take advice from Commercial and Procurement 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. The proposed method of engaging the market or particular potential candidates must also not prevent the Council from choosing a supplier that offers the best balance between the whole life cost (from acquisition to disposal) of goods and services against predefined requirements.
- 11.3. 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.

- 11.4. All potential candidates must be informed in advance by the Officer that any information shared as part of such an engagement may be declared as commercially confidential where this applies but that the Council reserves the right to share all information in order to comply with principles of Section 4.2 above. Further advice can be obtained from Commercial and Procurement.

## **12. Pre-procurement authorisations**

- 12.1. Officers must ensure, before entering into 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. the Strategic Commissioning Group is consulted as part of compliance with the Commissioning Gateway activity for all procurement and contracting activity above £50,000 total contract value
  - b. 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
  - c. the Council does not already have an available and appropriate existing Corporate Contract, Framework Agreement or Dynamic Purchasing System
  - d. 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;
  - e. the Council is not already undertaking a procurement process that

is within the scope of the proposed procurement; and

- f. all proposed expenditure is reported as a Non Key Decision Report.

12.2. 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.

12.3. The Officer must consult with Commercial and Procurement prior to preparing the Non Key Decision Report.

### **13. Total Contract Value**

13.1. 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 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 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 the 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 estimated value, inclusive 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.

13.2. 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 Council
- c. a Contract shall not be sub-divided with the effect of preventing it from falling within the scope of the Rules
- 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 the latter; 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.

13.3. When calculating the estimated value of the contract to determine whether the regulations apply, the contract value estimation should be inclusive of VAT irrespective of any VAT exemptions or recovery rates.

## 14. Procurement Thresholds

14.1. The table below sets out the Council's competition requirements.

<b>Contract type</b>	<b>Total Contract Value</b>	<b>Specification Requirements</b>	<b>Procurement process</b>
Goods, Services and Works	Up to £25,000	Purchasing requisition, specification	Recommended three written quotes, minimum 1 written quote ensuring Best Value  <i>See section 20</i>
Goods, Services and Works	Over £25,000 up to £50,000	Purchasing requisition, specification	Minimum of three written quotes  <i>See Section 20</i>
Goods and Services	Over £50,000 up to £100,000	Specification, evaluation criteria, terms and conditions	Quick Quote via the Council's Electronic Tendering System
Works	Over £50,000 up to £250,000		<i>See Section 21</i>

<b>Contract type</b>	<b>Total Contract Value</b>	<b>Specification Requirements</b>	<b>Procurement process</b>
Goods and Services	Over £100,000 and less than the Procurement Regulations Thresholds	Tender docs, specification, evaluation criteria, terms and conditions	Invitation to Tender via the Council's Electronic Tendering System  <i>See Section 22</i>
Works	Over £250,000 and less than the Procurement Regulations Threshold		
Goods, Services and Works	At and above the Procurement Regulations Threshold	Tender docs, specification, evaluation criteria, terms and conditions	Invitation to Tender as per the Relevant Legislation and via the Council's Electronic Tendering System  <i>See Section 23</i>

## **15. Relevant Legislation**

- 15.1. When planning and preparing all procurement and contracting activities the Officer shall have regard to the Relevant Legislation, relevant to the Service being procured as well as procurement activities.
- 15.2. The aims and objectives outlined in the Relevant Legislation shall, where appropriate, be incorporated into the procurement sourcing strategy, award methodology and terms and conditions of contract.

## **16. Relevant Policy**

- 16.1. 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
- g. the Climate Emergency
- h. the relevant Service Plan(s)
- i. Managing Contractors policy
- j. Relevant Service commissioning strategy.

16.2. The aims and objectives outlined in the Relevant Policy shall, where appropriate, be incorporated into the procurement sourcing strategy, award methodology and terms and conditions of contract.

16.3. The Local Government Transparency Code 2015 sets out the minimum data that local authorities should be publishing, the frequency it should be published and how it should be published. Procurement will ensure that all contract awards are published in accordance with the Transparency Code.

16.4. Purchase Orders of £5,000 and above will only be approved once Procurement and Finance have checked them. Procurement will examine all off-contract spend and target reductions in discretionary areas of spend and challenge those that should be using existing contracts.

## **17. Collaborative procurement**

17.1. Where the Council takes the lead procurement role in a collaborative procurement these Rules shall apply, as a minimum. Where another public body takes the lead procurement role the Rules of the lead organisation and any Relevant Legislation shall apply.

17.2. Where the Council enters into 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
- g. the process for the induction of new partners.

17.3. 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.

17.4. 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.

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

18.1. Where an appropriate Council Framework Agreement or Dynamic Purchasing System exists, the Officer must use it for the making of the proposed Purchase.

18.2. 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.

18.3. The use of another relevant organisation's Framework Agreement or Dynamic Purchasing System may be used, subject to consultation with Commercial and Procurement.

18.4. 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 Procurement Regulations Threshold.

## **19. Standard Procurement Documents**

- 19.1. 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.
- 19.2. Standard Procurement Documents are stored and maintained by Commercial and Procurement and can be obtained in consultation with a certified Procurement Officer.
- 19.3. Where it is necessary to vary the standard Procurement Documents or relevant Framework Agreement or Dynamic Purchasing System documents the Officer must consult with Commercial and Procurement.
- 19.4. 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 and agree any variations with Legal Services.

## **20. Procurement process for lower value purchases**

- 20.1. For Contracts up to the Total Contract Value of £50,000, where there is a suitable corporate Contract, Framework or Dynamic Purchasing System that corporate Contract, Framework Agreement or Dynamic Purchasing System shall be used, provided that such a course of action achieves the principles of Best Value.
- 20.2. 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 the following to demonstrate compliance:
  - up to £25,000 - recommend three written quotes, minimum one written quote

- ensuring Best Value
  - over £25,000 up to £50,000 - minimum of three written quotes.
- 20.3. Where the Officer is unable to select a potential candidate and/or demonstrate Best Value as outlined above, the Officer must consult with Commercial and Procurement on the most appropriate way forward.
- 20.4. 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, for example a specific stand-alone contract in which case the Purchase Order shall make separate reference to these.
- 20.5. 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.
- 20.6. The Officer must inform Commercial and Procurement in a timely manner of the Contract details for any Contract made in excess of £5,000, such that a record can be made on the Council's Contracts Register, in line with the Transparency Code.

## **21. Quick Quote**

- 21.1. For Contracts with a Total Contract Value over £50,000 up to £100,000 for Goods and Services up to £250,000 for Works where there is a suitable corporate Contract, Framework or Dynamic Purchasing System that corporate Contract, Framework Agreement or Dynamic Purchasing System shall be used.
- 21.2. 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, unless a suitable external Framework Agreement or Dynamic Purchasing System is identified and agreed with Commercial and Procurement.
- 21.3. The Officer must not include two stages within a procurement of this

nature (Selection Questionnaire and ITT).

- 21.4. 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 Find a Tender so as to attract appropriate candidates to bid.
- 21.5. 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
  - e. commercially confidential information schedules
  - f. completion requirements
  - g. the Selection Questionnaire
  - h. the Award Criteria
  - i. the submission requirements
  - j. a named contract manager.
- 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, for example a specific stand-alone contract 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.
- 21.8. A Contract award record must be made on the Council's Contracts Register and Find a Tender.

## **22. Procurement processes requiring Invitations to Tender**

- 22.1. For Contracts at and above the Total Contract Value over £100,000 for Goods and Services and over £250,000 for Works but less than the

Procurement Regulations Thresholds where there is a suitable corporate Contract, Framework or Dynamic Purchasing System that corporate Contract, Framework Agreement or Dynamic Purchasing System shall be used.

- 22.2. Where no suitable corporate 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 Find a Tender, unless a suitable external Framework Agreement or Dynamic Purchasing System is identified and agreed with Commercial and Procurement.
- 22.3. The Officer must not include two stages within a procurement of this nature (Selection Questionnaire and ITT).
- 22.4. 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.
- 22.5. An Invitation to Tender shall be sent to all parties who have expressed an interest, specifying a reasonable period for Tenders to be returned.
- 22.6. 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.

22.7. 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.

22.8. A Purchase Order must be raised.

22.9. A Contract award record must be made on the Council's Contracts Register and Find a Tender.

### **23. Procurement processes over the Procurement Regulations Threshold**

23.1. For Contracts at and above the Procurement Regulations Threshold where there is a suitable Framework Agreement or Dynamic Purchasing System approved by Commercial and Procurement, 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 as required in accordance with the agreed procurement process being followed (open, negotiated etc.) by advertising the opportunity via the Council's Electronic Tendering System, in Find a Tender (the UK e-notification service).

23.3. Advice on the most appropriate procedure to the specific case must be obtained from Commercial and Procurement, in conjunction with Legal Services where required.

23.4. In all cases the Relevant Legislation shall be followed to conduct the procurement and contracting activity.

23.5. 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.
- 23.6. The successful supplier and unsuccessful candidates shall be notified in accordance with the Relevant Legislation and a Standstill Period shall be observed.
- 23.7. A Purchase Order must be raised by the Officer.
- 23.8. A Contract award record must be made on the Council's Contracts Register, in Find a Tender (the UK e-notification service).

## **24. Light Touch Regime**

- 24.1. Certain Services Contracts, as defined in the Relevant Legislation, are not subject to its full rigour. However, the Council will remain bound by the requirement to ensure such procurements do not result in the violation of the Procurement Regulation principles and therefore Officers must ensure that the procedure used is compliant in all respects.
- 24.2. 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 and in Find a Tender (the UK e-notification service).
- 24.3. Where the Officer believes that their Contract falls within the Light Touch Regime they must consult with Commercial and Procurement prior to commencing any procurement or contracting activity.

## **25. Selection Criteria**

- 25.1. 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 and will be

included within the procurement documentation for all contracts over £100,000.

- 25.2. For Contracts with a Total Contract Value of up to £50,000 the Officer may choose to include the Selection Questionnaire within Quotations and may take advice from Commercial and Procurement where necessary.
- 25.3. 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 Procurement Regulations 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.
- 25.4. Where the Total Contract Value is at or above the Procurement Regulations 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
  - b. proportionate.
- 25.5. Selection Criteria must not include:
  - a. award criteria
  - b. non-commercial considerations
  - c. criteria that are not related and proportionate to the subject matter of the Contract.
- 25.6. The Officer shall consult with Commercial and Procurement for advice and guidance on the appropriate use of the Selection Questionnaire and Selection Criteria prior to issuing the Procurement Documents.
- 25.7. 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.
- 25.8. The Officer may reject candidates that fail against the mandatory and discretionary criteria as detailed within the Selection Questionnaire only in conjunction with Commercial and Procurement and Legal Services, where

relevant.

## **26. Award Criteria**

- 26.1. The Officer shall include the Award Criteria within the Procurement Documents, using these to assess a candidate's ability to deliver the Council's requirements under the Contract, achieving Best Value.
- 26.2. The Contract shall be awarded to the candidate whose Tender best meets the Award Criteria. on the basis of Most Economically Advantageous Tender (MEAT), taking criteria that are proportionate to and linked to the subject matter of the Contract.
- 26.3. The Officer shall consult with Commercial and Procurement for advice and guidance on the appropriate use of the Award Criteria prior to issuing the Procurement Documents.
- 26.4. 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.

## **27. Most Economically Advantageous Tender**

- 27.1. In selecting a preferred supplier, the Council must comply with the general principles of proportionality, mutual recognition, transparency, non-discrimination and equal treatment. In doing so all contract awards must be based on the Most Economically Advantageous Tender (the "MEAT").
- 27.2. The MEAT may be identified by using a price-quality ratio and the default position for such evaluations is a ratio of 60:30:10, 60% price, 30% quality and 10% social value.
- 27.3. However, in discussion with Commercial and Procurement, Officers must ensure the approach used to achieve MEAT is by the best means, using a methodology which is relevant and proportionate to the particular procurement being undertaken.
- 27.4. It is essential to ensure that the methodology used is;
  - a. relevant and proportionate for what is being purchased
  - b. one that will work within that particular market

- c. modelled before publication to ensure it meets the above requirements and does not result in any reporting anomalies.

27.5. Where the Officer fails to gain agreement with their counterpart in Commercial and Procurement on the methodology to be applied, the first point of review is a Strategic Manager in Commercial and Procurement. If agreement still is not achieved, the Officer must develop a business case justifying their approach detailing how it does comply with the requirements as per 27.1 and 27.4 above and obtain the approval of the Executive Director of Resources & Corporate Services of the approach before proceeding with the procurement.

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

28.1. 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.

28.2. The Officer must consult the Section 151 Officer concerning whether a parent company guarantee is needed where:

- a. the Total Contract Value exceeds the Procurement Regulations 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 candidate.

## **29. Terms and Conditions of Contracts**

29.1. 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.

29.2. Whilst some of the terms of the Contract are able to be amended or deleted, the following clauses are mandatory and must 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
- 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. contract exit on expiry (including transfer of the Council's data to the any new contractor and protection against risks to the council arising from the application of TUPE)
- h. 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 Procurement Regulations 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
- i. indemnity and insurance which adequately protects the Council against risk
- j. protection of personal data including measures required to ensure lawful processing of data in other jurisdictions
- k. confidentiality of sensitive commercial information
- l. dispute procedure
- m. authorised users
- n. governing law

- o. prompt payment and the obligation for Suppliers to pay their sub-contractors promptly, in accordance with the Small Business, Enterprise and Employment Act 2015
  - p. employee vetting, where appropriate and
  - q. 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.
- 29.3. 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
  - c. vetting to Enhanced Disclosure level where required.

### **30. Protection of personal data**

- 30.1. 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 General Data Protection Regulation (GDPR), Data Protection Act 2018, 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. Where under the Contract Personal Data is to be processed outside the UK or EU specific advice must be obtained from legal services before the Contract is entered into.

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

- 31.1. 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.

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

- 32.1. All Contracts above the Total Contract Value of £50,000 shall be submitted electronically through the Council's Electronic Tendering System.
- 32.2. 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.
- 32.3. 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 Officer Scheme of Delegation.

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

- 33.1. All submissions received for Contracts above the Total Contract Value of £50,000 shall be evaluated in accordance with the pre-determined Selection and Award criteria, as set out in the Procurement Documents.
- 33.2. 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.
- 33.3. 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.
- 33.4. 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 Procurement Regulations Threshold, then the Relevant legislation shall be adhered to in respect of the content of the letter and the Standstill Period.
- 33.5. 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.

33.6. The results of the Tender evaluation must be recorded and retained on the Tender file in accordance with the Council's records management, retention and disposal requirements.

### **34. Abnormally low bids**

34.1. 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 Commercial and Procurement 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.

34.2. Where the Officer establishes that the Tender is abnormally low because the candidate has obtained a Subsidy, 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
- c. where the candidate is unable to prove that the aid in question is compatible with the regulations governing Subsidies.

34.3. Where the Officer rejects a Tender on the basis of its incompatibility with the rules on Subsidies they will inform the Legal Services and Commercial and Procurement to agree the next steps.

### **35. Clarification**

35.1. Seeking clarification of a Tender to candidates is only permitted by a member of Commercial and Procurement and should in the first instance take place in writing via the Council's Electronic Tendering System. If sufficient clarification cannot be obtained in this manner further means can be

- a. at a meeting, provided that a written record is made of the meeting and
  - b. in a way that is fair, transparent, and equal to all candidates.
- 35.2. There must be no significant variation of the Procurement Documents or standard terms and conditions of contract following such clarification.
- 35.3. Where a clarification would result in a fundamental change to the specification or terms and conditions of contract the Contract must not be awarded but re- tendered.

### **36. Electronic auctions**

- 36.1. 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.
- 36.2. The use of electronic auctions must be specified within the Procurement Documents and the Award Criteria associated with the auction must be clearly defined. The auction will be undertaken by Commercial and Procurement using the Council's e-tender system.
- 36.3. 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.

## **SECTION E: CONTRACTAWARD**

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

- 37.1. For Contracts over the Procurement Regulations 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.
- 37.2. Following any Standstill Period, if appropriate, an award notice must be placed by Commercial and Procurement.

- 37.3. All candidates must be simultaneously notified in writing of the award and all letters informing them of the outcome of the Tender must comply with the Relevant Legislation.
- 37.4. Additional written or verbal debriefing must not be offered to candidates. Where debriefing is requested by candidates the Officer must obtain advice from Commercial and Procurement before responding to the request.
- 37.5. 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 Commercial and Procurement and Legal Services for review and response.
- 37.6. A Standstill Period is not necessary for Tenders below the Procurement Regulations 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 Commercial and Procurement. Where Commercial and Procurement advises that a 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.
- 37.7. 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 Procurement Regulations Threshold Tenders.

### **38. Approval to award**

- 38.1. 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>
Over £250,000	Only the Chief Executive and/or Executive Directors and Service Directors (Grades 1-3)

Up to £250,000	All Strategic Managers and officers at Grade 6 or above
Up to £50,000	All Service Managers and Officers at Grade 8 or above
Up to £10,000	Officer scale 11 or above
Up to £500	All Council officers

38.2. 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 the appropriate approval to award Call-Off Contracts in accordance with the contract value.

### **39. Signing of Contract**

39.1. Officers must ensure that all the necessary permissions are in place (e.g. funding commitments, licences, and leases) before the Contract is entered into.

39.2. All Contracts made on behalf of the Council must be in writing. 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 is in place before any Goods, Services or Works are requested or allowed to begin; 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.

39.3. For Contracts with a Total Contract Value of £100,000 or below for Goods and Services and £250,000 for Works they must always be signed by an Officer with the authority to do so under the Council's Scheme of Delegation (except where the Contract is in the form of a deed in which case paragraph 42.4 applies). 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.

- 39.4. For Contracts in the form of a deed or with a Total Contract Value over £100,000 for Goods and Services and £250,000 for Works (except where Section 39.7 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.
- 39.5. Contracts which these Rules require to be signed may be:
- a. signed electronically and exchanged by email. Where a Contract is signed and exchanged in this way the Officer responsible for securing signatures must follow guidance on electronic signatures issued by Legal Services and must retain a copy of the email from the contractor containing the signed Contract and must provide a copy to the Commercial and Procurement team; or
  - b. signed using Electronic Signing Software. Where Electronic Signing Software other than the Council's designated software is used the Officer authorised to sign the Contract is responsible for checking the compliance of the software to be used.
- 39.6. The Officer responsible for securing signatures must ensure that the person signing on behalf of the Supplier has the authority to bind it.
- 39.7. A Contract must be sealed with the common seal of the Council where:
- a. 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
  - b. there is any doubt about the authority of the person signing for the other party; or
  - c. the contract is required to be sealed by law.
- 39.8. 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 Monitoring Officer. 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.

#### **40. Letters of intent**

40.1. 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 Commercial and Procurement in conjunction with Legal Services and as such the Officer must obtain advice on their acceptable use.

#### **41. Early Termination of Contract**

41.1. 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.

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

42.1. 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 Commercial and Procurement and Legal Services.
- d. Variations to Contracts must be approved and signed by the relevant officers in accordance with the Council's Officer Scheme of Delegation.

## 42.2. Extension

- a. Extensions of Contracts may only be made where:
  - (i) there is budgetary provision
  - (ii) Best Value can be clearly demonstrated and
  - (iii) for Contracts below the Procurement Regulations 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 Procurement Regulations Threshold or
    - a waiver request form is completed where no specific provision exists in the Contract
  - (iv) for Contracts at or over the Procurement Regulations 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 Commercial and Procurement and Legal Services. Extensions to Contracts must be approved and signed by the relevant officers in accordance with the Council's Officer Scheme of Delegation.

## 42.3. 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 Commercial and

Procurement 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.

#### 42.4. 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 Officer Scheme of Delegation.

### **43. Supplier Resilience**

- 43.1. Contract Managers are required to undertake regular supplier resilience checks. For Tier 1 and Tier 2 contracts, this should be undertaken as a minimum on an annual basis and include checks on the supplier's operational, financial and reputational resilience including business continuity, insurance provision, financial credit rating, identification and management of key risks and emergency planning arrangements such as disaster recovery.
- 43.2. Evidence of review and testing of supplier Business Continuity Plans should be received regularly, for all Tier 1 and Tier 2 contracts at least annually and consideration given to how supplier failure may impact a Service's own business continuity arrangements, whether directly or indirectly.
- 43.3. Further information and guidance on contract management can be found in the Contract Management Framework and in the Managing Contractors policy.

### **44. Waivers**

- 44.1. Whilst the requirements of these Rules must be followed in respect of all Relevant Contracts the requirement to undertake a competitive

tendering exercise may be waived by Commercial and Procurement or the Executive Director of Resources & Corporate Services in highly exceptional circumstances.

- 44.2. The Officer must consult with Legal Services and Commercial and Procurement before submitting a waiver request.
- 44.3. It must be noted that not allowing sufficient time to Tender shall not be considered an emergency.
- 44.4. For Contracts of £100,000 or below for Goods and Services and £250,000 for Works where a waiver is necessary the Officer must complete the relevant waiver request form and obtain the approval of an appropriately empowered officer under the Council's Scheme of Delegation and the Head of Commercial and Procurement.
- 44.5. For Contracts over £100,000 or Goods and Services and £250,000 for Works where a waiver is necessary the Officer must complete the relevant waiver request form and obtain the approval of an appropriately empowered officer under the Council's Officer Scheme of Delegation and Section 151 Officer.
- 44.6. The Officer is responsible for ensuring that the waiver request forms are duly completed, reported to Strategic Commissioning Group (in line with thresholds) and signed prior to the award of a Contract. All waiver requests shall be reported regularly to the Governance Board by the Head of Commercial and Procurement.
- 44.7. No waiver shall be granted for Contracts over the Procurement Regulations Threshold unless expressly permitted by Commercial and Procurement and Legal Services. The officer shall contact Commercial and Procurement for advice under these circumstances. Any request for a waiver deemed by the Head of Service to be a potential breach of the Rules, will be considered within the Council's governance procedures.

## **45. Exemptions**

- 45.1. In addition to the waiver categories above there may be certain, very limited, exemptions from the application of the Rules that apply under the Legislation. These can only be executed with the prior written approval of Legal Services and Commercial and Procurement.

45.2. Pension Fund administration and governance arrangements are separate from main Council affairs and consequently not all of the requirements of these Rules apply to the Pension Fund. Exclusions will in the main only apply to approvals and reporting whilst all other principals surrounding the Rules and statutory requirements will remain. Where exemptions apply, these will be stated in the Pension Fund Scheme of Delegation and updated and approved periodically.

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

46.1. Officers are required to comply with the Rules at all times.

46.2. The Head of Commercial and Procurement shall report any non-compliance to the Rules to the next available meeting of the Governance Board.

46.3. Governance Board shall be responsible for determining the course of action to be taken in the event of non-compliance.

46.4. Where, in consultation with Commercial and Procurement 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.

46.5. 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.

46.6. 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.

46.7. Where the breach gives rise to disciplinary action the Governance Board shall notify the Executive Director of Strategy, Workforce & Localities

46.8. 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 G: **OTHER RELEVANT CONSIDERATIONS**

### **47. Subsidy control**

47.1. In all cases where there is a possibility of the Council providing a Subsidy the Officer must obtain the advice of Commercial and Procurement and Legal Services.

### **48. Development agreements**

48.1. In all cases where there is a possibility of the Council entering a development agreement the Officer must obtain the advice of Commercial and Procurement and Legal Services.