

Contract Procedure Rules - Contents

Brief Guide

1 - 4 Guide to Contract Procedure Rules

Section 1 - Scope

5 Basic Principles
6 - 18 Responsibilities
19 - 20 Relevant Contracts
21 - 30 Exemptions and Waivers
31 - 37 Collaborative and e-procurement arrangements

Section 2 - Common Requirements

38 Steps prior to purchase
39 - 41 Records
42 - 47 Advertising, approved lists, Dynamic Purchasing Systems and Framework Agreements
48 - 54 Approved Lists
55 - 59 Dynamic Purchasing Systems
60 - 61 Framework Agreements

Section 3 - Conducting Purchase and Disposal

62 - 71 Competition requirements for purchase, disposal and partnership arrangements
72 - 74 Appointment of Consultants
75 Assets for Disposal
76 Providing Services to External Purchasers
77 Social Value
78 - 79 Local economy and SME
80 -84 Collaborative working, co-production and Partnership Arrangements
85 Pre-tender market research and consultation
86 - 87 Lots
88 - 92 Standards and award criteria
93 - 99 Price Quality Split
100 - 104 Invitations to tender/quotations
105 - 106 Shortlisting
107 - 113 Submission, receipt and opening of tenders/quotations
114 - 118 Clarification procedures and post-tender negotiation
119 - 127 Evaluation, award of contract, and debriefing candidates

Section 4 - Contract and other Formalities

128 - 133 Contract documents (relevant contracts)
132 - 133 Contract Term
134 - 136 Contract formalities
137 - 139 Sealing
140 - 141 Bonds and parent company guarantees
142 - 143 Prevention of corruption
144 - 145 Declaration of interests

Section 5 - Contract Management

- 146 - 148 Managing contracts
- 149 Risk assessments and contingency planning
- 150 - 152 Contract monitoring, evaluation and review

Definitions Appendix

All costs stated in these Contract Procedure Rules are exclusive of VAT.

Terms appearing in the definitions appendix are italicised and capitalised.

Further advice can be sought from:

Corporate Procurement Unit
Legal Services

Officers responsible for purchasing must comply with these Contract Procedure Rules, along with the Financial Procedure Rules, the Code of Conduct for Employees, Property Procedure Rules and the Council's Scheme of Delegation, which are all set out in the *Constitution*, and with all UK and European Union binding legal requirements.

To the extent of any inconsistency or ambiguity between any of the above then it is acknowledged that UK and European Union binding legal requirements shall take precedence.

A Brief Guide to Contract Procedure Rules

These Contract Procedure Rules (issued in accordance with Section 135 of the Local Government Act 1972) are intended to promote good purchasing practice and public accountability, deter corruption, and assure *Value for Money* is obtained in the use of public funds. Following the rules is the best defence against allegations that a purchase has been made incorrectly or fraudulently.

1. *Officers* responsible for purchasing or disposal **MUST** comply with these Contract Procedure Rules. Failure to do so may result in disciplinary action in line with the Council's Disciplinary Procedure. For the purposes of this procedure the Contract Procedure Rules are a management instruction.
2. These Contract Procedure Rules lay down minimum requirements and a more thorough procedure may be appropriate for a particular contract (e.g. if Rule 65 would normally require that quotes be obtained, it might be appropriate in particular circumstances to seek additional quotations in writing or tender submissions. Equally, it may not always be appropriate to make use of an exemption under Rules 21 to 30 even if one might apply or be granted).
3. For the purposes of these Rules, where there is a requirement for communication to be in writing, this shall be deemed to include e-mail and fax transmissions as well as hard copy.
 - Follow these Rules if you purchase goods or services or order building works or any other works from a third party.
 - Take all necessary procurement, legal, financial and professional advice.
 - Declare any personal financial interest in a contract. Corruption is a criminal offence.
 - Ensure that there is a review of the requirement before any purchasing activity is commenced.
 - If the Public Services (Social Value) Act 2012, applies, consider how the economic, social or environmental well-being of the area might be improved by the design of the procurement process.
 - Inform *the Corporate Procurement Unit* of any expected or new procurement exercise to allow the *Procurement Plan* to be updated for the *Efficiency and Resources Scrutiny* and *Cabinet* (if required).
 - Check whether there is an existing *contract arrangement* or *Framework Agreement* before undertaking any procurement activity.
 - If the spend is £10k or over obtain prior approval from the Procurement Board for your proposed procurement activity
 - Ensure that appropriate timescales are allowed for the submission of bids. The timescale will depend on the complexity of the requirement and the Public Contract Regulations 2015.
 - Contracts with a value of £100k or over that are advertised will be advertised on the Council's website, on the North East Procurement Organisation's website and nationally on Contracts Finder.
 - Keep bids confidential.

- Complete a written contract and/or Council order before the supply or works begin.
 - On completion of a tender process a report must be compiled detailing the process followed, the evaluation process and the outcome of the tender.
 - Ensure the contract details are updated on the Contracts Register maintained by the Corporate Procurement Unit.
 - Ensure the contract is appropriately managed and that the contract delivers as intended (see Section 5).
 - Keep records of dealings with suppliers.
 - Assess each contract afterwards to see how well it met the purchasing need and *Value for Money* requirements.
4. In accordance with the *Constitution*, the *Assistant Director Law and Governance* has the power to make amendments from time to time to these Contract Procedure Rules to reflect decisions made by Council.

Section 1 - Scope

Basic Principles

5. All purchasing and disposal procedures must:
- Achieve *Best Value* for public money spent.
 - Be consistent with the highest standards of integrity.
 - Ensure fairness in allocating public contracts.
 - Comply with all legal requirements.
 - Ensure that *Non-commercial Considerations* do not influence any *Contracting Decision*.
 - Support the Council's corporate and departmental aims and policies.

Responsibilities

Officers

6. *Officers* responsible for purchasing or disposal must comply with these Contract Procedure Rules, Financial Procedure Rules, the Code of Conduct for Employees, Property Procedure Rules and the Council's Scheme of Delegation, which are all set out in the *Constitution*, and with all UK and European Union binding legal requirements. *Officers* must ensure that any *Agents*, *Consultants* and contractual partners acting on their behalf also comply.
7. *Officers* must ensure that any procurement that is anticipated to be £100,000 or over is entered onto the *Procurement Plan*. *Officers* must provide all relevant information to allow the Corporate Procurement Unit to update the *Procurement Plan*. The plan will be presented to Cabinet to enable them to designate a procurement as a *Strategic Procurement* or Non-Strategic Procurement. The only exemption to this rule is Contracts for performances at the Hippodrome (as per the Scheme of

Delegation).

8. *Officers* must:

- Have regard to relevant guidance from the *Corporate Procurement Unit* and Legal Services.
- Before seeking to let another contract, check with the *Corporate Procurement Unit* whether a suitable *Corporate Contract* or *Framework Agreement* exists. Where a suitable *Corporate Contract* or *Framework Agreement* exists, this must be used unless there is an auditable reason not to do so.
- If no pre-existing contract is available or there is an auditable reason not to use it then the *Officer* or *the Corporate Procurement Unit* will conduct a procurement exercise ensuring they keep the records required by Rules 39 - 41.
- Provide all relevant information to allow the *Corporate Procurement Unit* to keep the Contracts Register up to date.
- Take all necessary procurement, legal and financial advice.
- For any tender that is £100,000 or over all tender documents must be approved by the *Corporate Procurement Team* and Legal Services prior to issue to ensure they comply with all requirements.
- Ensure that any purchase that represents a *Strategic Procurement* has a Procurement Strategy agreed by Cabinet prior to tender for such a procurement.

9. When any employee either of the authority or of a service provider may be affected by any transfer arrangement, *Officers* must ensure that the Transfer of Undertaking (Protection of Employment) Regulations 2006 (*TUPE*) are considered and obtain advice from Human Resources and Legal Services before proceeding with invitations for *Tenders* or *Quotations*. Where it is considered that *TUPE* will apply, the implications should be made clear in the tender document.

10. All contracts will be let using the Council's *Standard Terms and Conditions*. Formal advice from Legal Services must be sought for contracts for which it is not proposed to use the Council's *Standard Terms and Conditions*.

Directors

11. *Directors:*

- Must ensure that their employees comply with Rules 6 to 10.
- Have the powers to make direct awards, subject to compliance with the exemptions requirements (see Rules 21 to 30).
- Must ensure contracts are signed in accordance with Rules 134 to 139 and arrange their safekeeping on Council premises.
- Must keep a record of exemptions made under Rule 25 and 26.

Council

12. Council's role is to agree these Contract Procedure Rules and any subsequent revisions of these Rules.

Cabinet

13. A *Procurement Plan* detailing all procurement decisions anticipated to be £100,000 or over to be made in the following year will be submitted to *Cabinet*. A risk assessment will be carried out by the Corporate Procurement Unit to identify potentially strategic procurements (high value, publically important and complex decisions). These will be deemed to be *Strategic Procurements*. *Cabinet* will approve the *Procurement Plan*. *Cabinet* will receive update reports on the progress of *Strategic Procurements*. *Cabinet* will approve any changes to the *Procurement Plan*.

Economy and Resources Scrutiny Committee

14. The Economy and Resources Scrutiny Committee will have a monitoring role for contracts and tendering. The *Procurement Plan* will be available to the *Economy and Resources Scrutiny Committee*. Monitoring reports on contract performance will be presented by *Officers* if requested by the *Economy and Resources Scrutiny Committee*.

Procurement Board

15. The Function of Procurement Board is to act as the main officer decision making forum for procurement decisions and to provide coherent oversight of procurement activity within the Council
16. The core membership of the Procurement Board will be the Group Director of Operations (who will ordinarily chair), the Assistant Director, Resources, the Assistant Director Law and Governance and/or the Principal Lawyer, Commercial. Other Directors and AD's may attend, depending on whether there are matters coming before the Procurement Board relevant to their service areas or matters of wider interest to be discussed
17. The role of the Procurement Board will be to:

- (a) Challenge the approach of commissioning officers across the Council for the purpose of improving value and efficiency.
- (b) Ensure that officers have considered their responsibilities in relation to SMEs, the not for profit sector and have addressed the duty in the Public Services (Social Value) Act 2012, before presenting to the Board
- (c) Provide direction on the best approach to commissioning, procurement and contract management.
- (d) Consider exception reports on contracts where performance is poor or where serious issues have arisen.
- (e) Approve procurement activity on proposed spend of £10k and above, including on frameworks, quotes and tenders.
- (f) Approve the award decisions of strategic procurements.
- (g) Determine requests for contract extensions.
- (h) Determine requests for waivers of these Rules.
- (i) Receive exemption reports submitted by Directors who have exercised powers under the emergency and urgency provisions (see exemptions and waivers below Rules 25 and 26)

18. Decisions of the Procurement Board will be subject to the Council's wider decision making rules in relation to Key Decisions. The decisions made by Procurement Board will be reported to Cabinet on a periodic basis.

Relevant Contracts

19. All *Relevant Contracts* must comply with these contract procedure rules. Where a sub-contractor or supplier is to be nominated to a main contractor then these rules apply as if the tender were for a contract with the Council. A *Relevant Contract* is any arrangement made by, or on behalf of, the Council for the carrying out of Works or for the supply of Goods, Materials or Services. These include, but are not limited to, arrangements for:
- the supply or disposal of goods;
 - the hire, rental or lease of goods or equipment;
 - the delivery of services, including those related to:-
 - the recruitment of employees;
 - land and property transactions;
 - financial and consultancy services.

20. *Relevant Contracts* do not include:

- Contracts of employment which make an individual a direct employee of the authority (though agency staff contracts are *Relevant Contracts*), or
- Agreements regarding the acquisition, disposal, or transfer of land where the transaction does not involve or contain development or other obligations on any third party

(see *Property Procedure Rules*)

Exemptions and Waivers

21. The Procurement Board has the power to waive any requirements within these Contract Procedure Rules for specific projects. This may include extensions to the existing contract term and the making of direct awards. Where a proposed contract is subject to the *EU Procedures* no exemption can be used.
22. Where the value of the proposed contract is £10,000 or above but below £100,000 and it is proposed not to seek three quotes or to directly award, an application must be made to the Procurement Board to waive the contract procedure rules.
23. Where the value of a proposed contract is estimated to be £100,000 or above but expected to fall below the *EU Threshold*, in exceptional circumstances, an application may be made to Procurement Board requesting a waiver of any requirements within these Contract Procedure Rules, stating the reasons for the request. When considering the option to waive Contract Procedure Rules, *Officers* must liaise with the *Corporate Procurement Unit* and Legal Services.
24. Where the value of a proposed contract is estimated to be £100,000 or above but expected to fall below the *EU Threshold* and a tender exercise has been carried out in accordance with these rules but the procedure has failed to identify any suitable bid, the Procurement Board may approve the commencement of a negotiated procedure. However this may only be carried out by the *Corporate Procurement Unit*.
25. Where an exemption is necessary because of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to Council services, a *Director* may approve the exemption in accordance with the *Scheme of Delegation* but must prepare a report for the next Procurement Board to support the action taken, setting out the reason for such urgency, how it complies with relevant legislation and represents *Value for Money*. An exemption under this rule 25 allows a contract to be placed by direct negotiation rather than in accordance with section 3 of these Contract Procedure Rules.
26. Where there is a need to provide urgent special educational needs, urgent social care contracts or urgent operational needs and, in the opinion of the relevant *Director*, it is considered to be in the Council's interests or necessary to meet its

obligations and is not covered by existing contract provision, a *Director* can approve an exemption in accordance with but they must prepare a report for the next Procurement Board to support the action setting out the reason for such urgency, how it complies with relevant legislation and represents *Value for Money*.

27. Any Contracts for performances at the Hippodrome may be negotiated and signed for by the Assistant Director – Community Services (as per the Scheme of Delegation).
28. The Contract Procedure Rules will only be waived as an exception. The Procurement Board when considering requests for waivers shall take into account the following:
 - (a) The contact value and the length of the proposed contract.
 - (b) What steps have been taken to satisfy that the best value duty has been complied with (for instance quotations, market testing).
 - (c) The extent to which there are good reasons why it is not possible to undergo a competitive process (for instance, pressing need or urgency, where further work is required before going to market, where only a short contract extension is needed, or the lack of an available market).
 - (d) Whether the new contract is intended to be a stop gap prior to undergoing a competitive process.
 - (e) The availability of compliant alternatives to direct awards, such as frameworks.
 - (f) How the purchase represents value for money.
 - (g) Any other reason that is being given by the commissioning area.
29. Any decisions made to waive Contract Procedure Rules must be reported back to Cabinet.
30. Decisions to waive Contract Procedure Rules must be recorded and will be subject to the Council's wider decision making rules in relation to key decisions.

Collaborative and E-Procurement Arrangements

31. All purchases made via a local authority purchasing and distribution consortium, from a Public Sector Framework, or in collaboration with other Local Authorities, are deemed to comply with these Contract Procedure Rules and no exemption is required. However, purchases above the *EU Threshold* must be let under the *EU Procedure*, unless the consortium has satisfied this requirement already by letting their contract in accordance with the *EU Procedures* on behalf of the authority and other consortium members. This will include the requirement in relation to the signatory of the contract. The adoption of a Public Sector Framework shall be subject to the usual requirements for the Procurement Board and Cabinet approval.
32. A procurement exercise can be carried out using an existing Public Sector *Framework Agreement* such as by Crown Commercial Services, provided that the proposed contract is within the scope of the existing framework agreement. The terms and conditions of contract applicable to any framework arrangement, including

the requirement to undertake competition between providers, must be fully complied with. Advice must be sought from the Corporate Procurement Unit.

33. In order to secure *Value for Money*, the authority may enter into collaborative procurement arrangements. The *Officer* must consult the Corporate Procurement Unit where the purchase is to be made using collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium.
34. Any contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the contract procedure rules of the leading organisation, will be deemed to comply with these contract procedure rules and no exemption is required. However, advice must be sought from the Corporate Procurement Unit. The adoption of such contracts shall remain subject to the Procurement Board and Cabinet approvals.
35. Where the Council has been successful in securing external grant funding to deliver a project any rules pertaining to that grant funding will take precedence over these Contract Procedure Rules.
36. The use of e-procurement technology does not negate the requirement to comply with all elements of these contract procedure rules, particularly those relating to competition and *Value for Money*.
37. In advance of either advertising a tender opportunity or carrying out a mini-tender from a *Framework* a decision can be made to carry out an *e-Auction*. Notification of the use of an *e-Auction* must be included in the Tender advert and documentation.

Section 2 – Common Requirements

Steps prior to Purchase

38. The *Officer* must consider the purchase, according to its complexity and value, and taking into account any relevant guidance provided by Corporate Procurement Unit by:
 - Taking into account the requirements from any relevant service review.
 - Appraising the need for the expenditure and its priority.
 - Inform the Corporate Procurement Unit of intention to tender.
 - Defining the objectives of the purchase.
 - Assessing the risks associated with the purchase and how to manage them, is this *Strategic Procurement*?
 - Considering what procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing, partnering, packaging strategy and collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium.

- If the Public Services (Social Value) Act 2012, applies, consider how the economic, social or environmental well-being of the area might be improved by the design of the procurement.
- Consider what steps could be used to ensure maximum participation, including making it attractive to SME's (such as pre engagement, the specification design and the possibility of splitting the contract into lots.)
- Consulting users as appropriate about the proposed procurement method, contract standards and performance and user satisfaction monitoring.
- Drafting the terms and conditions that are to apply to the proposed contract and agreeing final version with Legal Services.
- Setting out these matters in writing.
- Ensuring appropriate consultation with relevant Cabinet Members has taken place dependant on nature and level of risk associated with the contract to be tendered.
- Adopting Project Management Methodology where appropriate, ensuring the interests of all stakeholders are represented.
- Identifying suitable people who will be responsible for evaluating tenders.

You must also ensure that:

- There is *Cabinet* or delegated approval for the expenditure and the purchase accords with the approved policy framework and scheme of delegation as set out in the *Constitution*.
- For spend of £10,000 or above you must have prior approval from the Procurement Board for your proposed procurement activity.
- The contract is on the *Procurement Plan* and if the purchase is a *Strategic Procurement* that all appropriate steps have been taken to comply with the requirement of the Forward Plan and the period for call-in.

Records

39. Where the *Total Value* is £10,000 or above but less than £100,000, the *Officer* must record:
- Invitations to quote and *Quotations*.
 - The method for obtaining bids (see Rules 65 to 71).
 - Any *Contracting Decision* and the reasons for it.
 - Any exemption under Rules 21 to 30 together with the reasons for it.
 - The *Award Criteria* in descending order of importance.
 - Documents sent to and received from *Candidates*.
40. Where the *Total Value* is £100,000 or higher the *Officer* must record:
- The method for obtaining bids (see Rules 65 to 71).
 - Any *Contracting Decision* and the reasons for it.
 - Any exemption under Rules 21 to 30 together with the reasons for it.
 - the *Award Criteria* and any sub-criteria including any scoring mechanisms to be applied during the evaluation process.

- All documents sent to and received from *Candidates*.
 - Pre-tender market research.
 - Variation of any contract documents.
 - Any correspondence between any *Candidate* and the Council.
 - Clarification and post-tender negotiation (to include minutes of meetings) See rules 114 – 118.
 - The contract documents.
 - Post-contract evaluation and monitoring.
 - Communications with *Candidates* and with the successful contractor throughout the period of the contract.
41. Records required by this rule must be kept for six years after the term of the contract has expired. Contracts under seal must be kept for 12 years after the term of the contract has expired. Records relating to Post Tender Negotiation can be destroyed 12 months after the term of the Contract has expired. However, written documents which relate to unsuccessful *Candidates* may be electronically scanned or stored by some other suitable method after 12 months from award of contract, provided there is no dispute about the award.

Advertising, Approved Lists Dynamic Purchasing Systems and Framework Agreements

Identifying and Assessing Potential Candidates

42. *Officers* shall ensure that, where proposed contracts, irrespective of their *Total Value*, might be of interest to potential *Candidates* located in other member states of the EU, a sufficiently accessible advertisement is published. Generally, the greater the interest of the contract to potential bidders from other member states, the wider the coverage of the advertisement should be. Examples of where such advertisements may be placed include:
- The Council's website.
 - Contracts finder.
 - Portal websites specifically created for contract advertisements.
 - The NEPO website.
 - National official journals.
 - The Official Journal of the European Union (OJEU)/Tenders Electronic Daily (TED) (even if there is no requirement within the *EU Procedure*).
43. Every contract opportunity that is advertised and where the total value is £25,000 or above must be advertised using contracts finder. This is regardless of whatever advertising method is used. The only exceptions to this are where quotes are sought from closed groups, or frameworks, approved lists or dynamic purchasing systems are used or direct awards are made. In those circumstances an advert need not be placed on contracts finder.
44. *Officers* are responsible for ensuring that all *Candidates* for a *Relevant Contract* are suitably assessed. The assessment process shall establish that the potential

Candidates have sound:

- Economic and financial standing.
 - Technical ability and capacity to fulfil the requirements of the Authority.
45. This shall be achieved in respect of proposed contracts that are expected to exceed £100,000 by selecting firms from:
- *Using firms from an Approved Lists* of providers, maintained by the authority or on its behalf, and compiled following responses to a public advertisement.
 - *Using a dynamic purchasing system.*
 - Shortlists assessed from expressions of interest in a particular contract submitted in response to a public advertisement.
46. For below threshold procurements pre-qualification questionnaires can no longer be used.
47. Public advertisements shall reflect the potential degree of interest from *Candidates* located within other member states of the EU.

Approved Lists

48. *Approved Lists* can be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise. *Approved Lists* cannot be used where the *EU Procedure* applies.

Directors may draw up:

- *Approved Lists* of persons ready to perform contracts to supply goods or services of particular types including without limitation on the basis of agreed contract terms.
 - Criteria for *Shortlisting* from the lists.
49. No person may be entered on an *Approved List* until there has been an adequate investigation into both their financial and their technical ability to perform the contract, unless such matters will be investigated each time bids are invited from that list.
50. *Approved Lists* must be drawn up after an advertisement inviting applications for inclusion on the list. The advertisement must be placed to secure the widest publicity among relevant suppliers.
51. The list and *Shortlisting* criteria must be reviewed at least annually and re-advertised at least every three years. On re-advertisement, a copy of the advertisement must be sent to each company on the list, inviting them to reapply. Review means:
- The reassessment of the financial and technical ability and performance of those persons on the list, unless such matters will be investigated each time

bids are invited from that list.

- The deletion of those persons no longer qualified, with a written record kept justifying the deletion.
52. All *Approved Lists* shall be maintained in an open, fair and transparent manner and be open to public inspection.
 53. A register of pre-qualified contractors and *Consultants* maintained by or on behalf of central government e.g. Construction Line will be deemed to be an *Approved List* for the purpose of these rules and shall not be subject to the requirements of Rules 49 to 52 inclusive.
 54. Officers must seek advice from the *Corporate Procurement Unit* before considering setting up an *Approved List*. The use of *Approved list* will be subject to reporting to the CPU.

Dynamic Purchasing Systems

55. Dynamic purchasing systems are electronic systems for the purchase of commonly used goods services or works.
56. It must be advertised and achieve the widest publicity among relevant suppliers. It will remain open throughout the duration of its operation for the admission of any supplier who satisfies the qualification criteria.
57. It is unsuitable for areas of spend where quick decisions are required. Under a Dynamic Purchasing System all admitted participants are invited to tender for each specific procurement and the minimum time limit for receipt of tenders is 10 days.
58. The system must operate entirely electronically.
59. Officers must seek advice from the Corporate Procurement Unit before considering setting up a Dynamic Purchasing System. The use of a dynamic purchasing system will be subject to reporting to the Corporate Procurement Unit.

Framework Agreements

60. The term of a *Framework Agreement* must not exceed four years and may be entered into with one or more providers. The number of providers to be included on the *Framework Agreement* will be agreed in advance with the Corporate Procurement Unit.
61. Contracts based on *Framework Agreements* may be awarded by either:
- Applying the terms laid down in the *Framework Agreement* (where such terms are sufficiently precise to cover the particular call-off) without reopening competition.
 - Where the terms laid down in the *Framework Agreement* are not precise enough or complete for the particular call-off, by holding a mini competition in accordance with the following procedure:
 - inviting the organisations within the *Framework Agreement* that are capable of executing the subject of the contract to submit written *Tenders*;
 - fixing a time limit which is sufficiently long to allow *Tenders* for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract;
 - awarding each contract to the tenderer who has submitted the best *Tender* on the basis of the *Award Criteria* set out in the specifications of the *Framework Agreement*.
 - *Officers* must note the requirement to apply a minimum 10 day standstill period for all call-off contracts awarded under the framework in excess of the appropriate EU Threshold.
 - *Officers* must ensure that any call-off contract awarded under the framework that is £100,000 or above has been entered onto the *Procurement Plan*.

Section 3 – Conducting Purchase and Disposal

Competition requirements for purchase, disposal and partnership arrangements

62. The *Officer* must consider the total value of the contract when deciding the most appropriate procurement route. An *Officer* must not enter into separate contracts nor select a method of calculating the *Total Value* in order to minimise the application of these contract procedure rules.
63. The total value is the whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal calculated as follows:
- (a) Where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period of the Contract. For the avoidance of doubt this is not the annual value.
 - (b) Where a series of contracts or a renewable contract is entered into for supplies/services of the same type during a twelve month period.
 - (c) Where the contract is for an uncertain duration, by multiplying the monthly payment by 48.
 - (d) For feasibility studies, the value of the scheme or contracts which may be awarded as a result.
 - (e) For *Nominated Suppliers and Sub-contractors*, the total value shall be the value of that part of the main contract to be fulfilled by the *Nominated Supplier or Sub-contractor*.
64. The following procedures apply where there are no other procedures that take precedence. Other procedures may include agency agreements with government. If in doubt, *Officers* must seek the advice of the *Assistant Director Law and Governance*.

Purchasing – Competition Requirements

65. Where the *Total Value* for a purchase is within the values in the first column below, the *Award Procedure* in the second column must be followed.

Total Contract Value	Award Procedure
Up to £9,999	One written <i>Quotation</i> (<i>Quotations not required under £500</i>)
£10,000 - £24,999	At least three written <i>Quotations</i>
£25,000 - £99,999	At least three written <i>Quotations</i> <i>If advertised, it must also be advertised on contracts finder</i>
£100,000 – EU Threshold	<i>Invitation to Tender</i> by advertisement (including using Contracts Finder) or list to at least five <i>Candidates</i>
Above EU Threshold	<i>EU Procedure</i> or, where this does not apply, <i>Invitation to Tender</i> by advertisement/list to at least five <i>Candidates</i>

66. Where it can be demonstrated that there are insufficient suitably qualified *Candidates* to meet the competition requirement, all suitably qualified *Candidates* must be invited.
67. For contracts with a value of £25,000 or above (and below the relevant EU threshold) that are advertised, must be advertised using Contracts Finder (whatever other advertising methods are used). The only exceptions to this are where quotes are sought from closed groups, or frameworks, approved lists or dynamic purchasing systems are used or direct awards are made.
68. Contracts that are over the relevant EU threshold must comply with the EU rules on publication and the use of OJEU notices. In addition advertising on Contracts finder is required.
69. When inviting *Quotations* up to the value of £99,999 *Officers* should consider how to encourage the participation of SME's and local suppliers in the process. *Officers* should consider the benefits of including a local supplier in the invitation to quote where appropriate or applicable to the contract.
70. Where the *EU Procedure* is required, the *Officer* shall follow the most appropriate route for procurement, taking account of any relevant guidance and advice as provided by the *Corporate Procurement Unit*.

71. The EU thresholds vary according to what is being procured and the monetary values of the thresholds are updated every two years. Details of the thresholds are set out on the intranet together with information about procurement above EU thresholds.

Appointment of Consultants

72. Consultant architects, engineers, surveyors and other professional *Consultants* shall be selected and commissions awarded in accordance with the procedures detailed within these Contract Procedure Rules. Where a local, regional or national Framework exists then the *Officer* must use that Framework or demonstrate an auditable reason for not doing so. If a Framework is not used then consultants shall be appointed as outlined above.
73. The engagement of a *Consultant* shall follow the agreement of a brief that adequately describes the scope of the services to be provided and shall be subject to completion of a formal contract which clearly sets out the terms of their appointment.
74. *Officers* will require *Consultants* to maintain professional indemnity insurance policies to the satisfaction of the relevant *Director* for the period of the contract and any warranty period.

Assets for Disposal

75. Assets for disposal must be sent to public auction except where better *Value for Money* is likely to be obtained by inviting *Quotations* and *Tenders* (These may be invited by advertising on the Council's internet site). In the latter event, the method of disposal of surplus or obsolete stocks/stores or assets other than land must be formally agreed with the *Departmental Finance Officer*.

Providing Services to External Purchasers

76. Where contracts to work for organisations other than the Council are contemplated, the relevant *Director* must satisfy themselves that the work can be carried out with no detrimental effect to the Council and this decision is made in consultation with the relevant cabinet Member. A report detailing under which Statutory Powers they are tendering must be submitted to the *Assistant Director Law and Governance* for confirmation.

Social Value

77. In line with the Public Services (Social Value) Act 2012, relevant procurements (of services over the current EU threshold) shall include consideration of the economic, social and environmental well-being of the area, how the Council might act with a view to securing improvement and whether to undertake any consultation in considering these improvements.

Local Economy and SME

78. The Council recognises the importance of a thriving and sustainable economy and will seek to ensure, in compliance with EU law and the Social Value Act that all businesses, including local businesses and SME's are aware of and encouraged to participate in tendering opportunities.
79. Consideration should be given to using procedures that encourage maximum participation, including preliminary market consultation and the splitting up of contracts into lots that may encourage wider participation. While the Council cannot unfairly favour local suppliers, it is legitimate to give consideration in drawing up a specification to factors that may have relevance to locality. For example those which require service delivery to be within a certain timescale or location in order to be responsive to service need. It is also necessary for procurers to consider the social and economic and environmental aspects of letting contracts.

Collaborative working, Co-production and Partnership Arrangements

80. The Council recognises the need to work collaboratively and more flexibly with the third and voluntary sector in the delivery of services to the local community. This may require more innovative approaches and early dialogue with the third sector, service users and communities in transforming the design and delivery of services.
81. Consideration should be given to using procedures that encourage maximum participation (for instance simplifying procedures and not using PQQ's unless necessary) and the splitting up of contracts into lots that may encourage wider participation.
82. Where appropriate the Council may include in its specification and award criteria, factors that may have relevance to locality such as the social and economic and environmental aspects of letting contracts.
83. In cases where it can be demonstrated that the partners are contributing to a joint outcome rather than where the Council is purchasing services or where grants are awarded these are not procurements but as this can limit the Council's ability to specify outcomes and performance manage results the rules can better define their scope in the introductory passages.
84. Officers should seek further advice from the Corporate Procurement Unit.

Pre-tender Market Research and Consultation

85. The *Officer* responsible for the purchase:
- May consult potential suppliers prior to the issue of the *Invitation to Tender* in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any potential *Candidate*, but
 - Must not seek or accept technical advice on the preparation of an *Invitation to Tender* or *Quotation* from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential *Candidates* or distort competition, and
 - Should seek advice from the Corporate Procurement Unit.

Lots

86. In some cases splitting the contract into lots may be advantageous to the Council and will make the contract more attractive to suppliers, particularly SME's.
87. It is a legal requirement to consider whether to split a contract into lots. Consideration must be given to this and when lots are not used officers must be able to justify why it was not considered appropriate to do so.

Standards and Award Criteria

88. The *Officer* must ascertain what are the relevant British, European or international standards that apply to the subject matter of the contract. The *Officer* must include those standards that are necessary properly to describe the required quality.
89. The *Officer* must define detailed *Award Criteria* that is appropriate to the purchase and designed to secure an outcome giving *Value for Money* for the authority.
90. The underlying principle of the award criteria shall be on the basis of the most economically advantageous tender (MEAT).
91. This may be on the basis of price or cost alone. It will be the lowest price where payment is to be made by the Council and the highest price if payment is to be received by the Council.
92. As well as price additional factors may also be relevant such as; service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, quality, relevant environmental considerations, economic benefits to the local community, aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance and any other relevant matters. If you are unsure please contact the Corporate Procurement Unit for advice on award criteria and related tender specifications.

Price/Quality Split

93. Most commonly the evaluation criteria will be based on a price/quality split.
94. There are significant consequences if the balance between cost and quality is lost. A split of 80% on quality and only 20% on price is giving a message to a tenderer that evaluation is based on quality and cost is no object. The local authority should not be giving out this message. Where price forms a significant part of the evaluation through the scoring this encourages bidders to make stretching submissions to deliver services at the best possible value.
95. A detailed specification is the best way of achieving quality in contracting and effective contract monitoring through a performance management framework. So that quality in delivery is achieved through the management of the contract after award rather than the evaluation process.
96. The following approaches are recommended as means of achieving quality in contracts in preference to price/quality split.
 - (a) 0 – 5 scoring criteria.
 - (b) The use of performance or outcomes based payments in all significant service contracts, which will be payable only when defined targets/quality standards are achieved. This will encourage the provider to take their own steps to ensure targets/quality standards are met throughout the contract.
 - (c) Contracts with appropriate termination/ suspension clauses to enable the Council to take steps to change bidders while avoiding complex litigation.
 - (d) Engagement with service users/ questionnaires.
 - (e) Performance targets which are tightly managed.
 - (f) Rigorous challenge through the evaluation of claims made by tenderers in bid documentation.
97. The quality safeguards above ensure that quality is maintained as a continuous requirement throughout the lifetime of the contract for service provision.
98. In the construction area there are variations but the higher figure (ie 60/40, 70/30, 80/20) will be on price. The most common being 80/20.
99. In the social care sector a greater emphasis is placed on quality. However there is a need to ensure that there is still an emphasis on price. In particular any proposal with 80% on quality should be resisted as giving the wrong message to providers. It is recommended that 40% should be the lowest with any case in which the price is less than 50% being subject to a specific business case to the procurement board as to why this is appropriate and how value for money will be achieved.
100. *Award Criteria* must include a suitable proportion of the evaluations criteria to be based on Social Value (unless there are appropriate reasons why Social Value should not apply). For tenders over the EU Threshold, this should usually be not less than ten per cent of the total award criteria and form part of the Quality Criteria.

Invitations to Tender/Quotations

101. The *Invitation to Tender* shall state that no *Tender* will be considered unless it is received by the date and time stipulated in the *Invitation to Tender*. No *Tender* delivered in contravention of this clause shall be considered. All *Invitations to Tender* and *Quotations* will be issued through the Council's *e-Tendering & Contract Management System*, so far as such a system is available. Exceptions to this can be made if it is deemed that the process will disadvantage a particular sector or company.
102. All *Invitations to Tender* shall include the following:
- (a) A specification that describes the authority's requirements in sufficient detail to enable the submission of competitive offers.
 - (b) A requirement for tenderers to declare that the *Tender* content, price or any other figure or particulars concerning the *Tender* have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose).
 - (c) A requirement for tenderers to complete fully and sign all *Tender* documents including a form of *Tender* and certificates relating to canvassing and non-collusion.
 - (d) Notification that *Tenders* are submitted to the Council on the basis that they are compiled at the tenderer's expense.
 - (e) Notification that no *Tender* will be considered unless it is enclosed in a sealed envelope or container which bears the word 'Tender' followed by the subject to which it relates, but no other name or mark indicating the sender.
 - (f) A stipulation that any *Tenders* submitted by fax or other electronic means shall not be considered.
 - (g) A description of the Award Procedure and, unless defined in a prior advertisement, a definition of the Award Criteria in objective terms and if possible in descending order of importance.
 - (h) The method by which any arithmetical errors discovered in the submitted *Tenders* is to be dealt with. In particular, whether the overall price prevails over the rates in the *Tender* or vice versa.

103. All *Invitations to Tender* or *Quotations* must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply (see Rules 128 to 133).
104. The *Invitation to Tender* or *Quotation* must state that the Council is not bound to accept any *Quotation* or *Tender*.
105. All *Candidates* invited to *Tender* or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

Shortlisting

106. Any *Shortlisting* must have regard to the financial and technical standards relevant to the contract and the *Award Criteria*. Special rules apply in respect of the *EU Procedure*.
107. When *Approved Lists* are used then *Shortlisting* can be carried out by an *Officer* in accordance with the *Shortlisting* criteria drawn up when the *Approved List* was compiled. However, where the *EU Procedure* applies, *Approved Lists* may not be used.

Submission, Receipt and Opening of Tenders/Quotations

108. *Candidates* must be given an adequate period in which to prepare and submit a proper *Quotation* or *Tender*, consistent with the complexity of the contract requirement. Normally at least four weeks should be allowed for submission of *Tenders*. The *EU Procedure* lays down specific time periods, please speak to the Corporate Procurement Unit for advice for these timescales.
109. When the *e-Tendering & Contract Management System* is used tenders will be held securely until the appropriate time and date for release. The *Assistant Director Law and Governance* shall be responsible for the management of the *e-Tendering & Contract Management System*.
110. When using the *e-Tendering & Contract Management System*, the precise date and time of receipt is recorded automatically. The secure files are released by an *Officer* representing the *Assistant Director Law and Governance* and record immediately on opening on the *Tender Record Log*. *Tenders* received by fax or other electronic means (e.g. email) must be rejected.
111. When accepting hard copy *Tenders* these must be returned to the *Assistant Director Law and Governance*. *Tenders* received by fax or other electronic means (e.g. email) must be rejected, unless they have been sought in accordance with the Council's *e-Tendering & Contract Management System*. The *Assistant Director Law and Governance* will be responsible for the safekeeping of *Tenders* until the appointed time of opening. Each *Tender* must be:-

- Suitably recorded so as to subsequently verify the date and precise time it was received.
 - Adequately protected immediately on receipt to guard against amendment of its contents.
 - Recorded immediately on receipt in the *Tender Record Log*.
112. The *Assistant Director Law and Governance* must ensure that all hard copy *Tenders* are opened at the same time when the period for their submission has ended. The *Officer* or their representative must be present. *Tenders* must be opened in the presence of two *Officers* representing the *Assistant Director Law and Governance*
113. Upon opening the Tender sum must be recorded in the *Tender Record Log*. The *Tender Record Log* must be initialled on behalf of the *Assistant Director Law and Governance*.
114. The *Officer* must not disclose the names of *Candidates* to any staff involved in the receipt, custody or opening of *Tenders*.

Clarification Procedures and Post-tender Negotiation

115. Providing clarification of an *Invitation to Tender* to potential or actual *Candidates* or seeking clarification of a *Tender* should only be carried out in writing. If using the e-*Tendering & Contract Management System* this should be used for all correspondence relating to clarification during the tender process. Responses to any queries raised regarding the *Invitation to Tender* documentation or process will be shared with all potential or actual *Candidates* if appropriate.
116. Discussions with tenderers after submission of a *Tender* and before the award of a contract with a view to obtaining adjustments in price, delivery or content (i.e. post-tender negotiations) must be the exception rather than the rule. In particular, they must not be conducted in an *EU Procedure* where this might distort competition, especially with regard to price.
117. If post-tender negotiations are necessary after a single-stage *Tender* or after the second stage of a two-stage *Tender*, then such negotiations shall only be undertaken with the tenderer who is identified as having submitted the best *Tender* and after all unsuccessful *Candidates* have been informed. During negotiations tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the *Tender* documents. *Officers* appointed by the *Director* to carry out post-tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.
118. Post-tender negotiation must only be conducted in accordance with the guidance issued by the *Assistant Director Law and Governance* who, together with the Corporate Procurement Unit must be consulted wherever it is proposed to enter into post-tender negotiation. Negotiations must be conducted by a team of at least two *Officers*, one of whom must be from a division independent to that leading the negotiations.

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

Evaluation, Award of Contract, and Debriefing Candidates

120. Apart from the debriefing required or permitted by these Contract Procedure Rules, the confidentiality of *Quotations*, *Tenders* and the identity of *Candidates* must be preserved at all times and information about one *Candidate's* response must not be given to another *Candidate*.
121. Contracts must be evaluated and awarded in accordance with the *Award Criteria*. During this process, *Officers* shall ensure that submitted *Tender* prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.
122. The arithmetic in compliant *Tenders* must be checked. If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm or withdraw their *Tender*. Alternatively, if the rates in the *Tender*, rather than the overall price, were stated within the *Tender* invitation as being dominant, an amended *Tender* price may be requested to accord with the rates given by the tenderer.
123. *Officers* may accept *Quotations* and *Tenders* received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these contract procedure rules. Procurement Board shall also approve the awarding of contracts that represent a *Strategic Procurement* and the details will be reported to *Cabinet*.
124. Where the total value of the contract is £100,000 or above, the *Officer* must notify all *Candidates* simultaneously and as soon as possible of the intention to award the contract to the successful *Candidate*. For those *Tenders* in excess of the EU Thresholds or if it is a *Strategic Procurement*, the *Officer* must provide unsuccessful *Candidates* with a standstill period of at least ten days in which to challenge the decision before the *Officer* awards the contract. In the event that an unsuccessful *Candidate* challenges the decision then the *Officer* should immediately seek the advice from the *Assistant Director Law and Governance*.

125. The *Officer* shall simultaneously by quickest means possible, debrief in writing all those *Candidates* who submitted a bid. No information, other than the following, should be given without taking the advice of the *Assistant Director Law and Governance* :-
- The name of the winning bidder(s).
 - The award criteria as stated in the tender documentation.
 - The scores of the unsuccessful and successful bidder(s) against the award criteria.
 - A paragraph explaining fully the reasons why the company has been unsuccessful. This must include the characteristics and relative advantages of the successful bid against the unsuccessful tenderers bid. Officers must insert detailed information in relation to the areas where the Candidate has failed to score well.
126. Where a standstill period is required this should be a minimum of 10 calendar days where information is provided electronically (email, fax) if alternative methods are used the period required is 15 calendar days. The standstill period must commence on a working day, the standstill period shall commence the day after the notification is issued. The standstill period shall end on midnight on the 10/15 day. The standstill notification must clearly indicate when the standstill period shall end.
127. If an *Officer* is notified by an unsuccessful bidder of their intention to challenge the decision to award a contract they should take no further action other than contact Corporate Procurement Unit *and Legal Services*. The contract must not be awarded until legal proceedings have been concluded.
128. For contracts with a value of £25,000 or over it is a legal requirement that information is published on Contracts Finder, within a reasonable time, giving:
- (a) The name of the contractor
 - (b) The date on which the contract was entered into
 - (c) The value of the contract
 - (d) Whether the contractor is an SME or VCSE

Section 4 – Contract and Other Formalities

Contract Documents

Relevant Contracts

129. All *Relevant Contracts* shall be in writing. The *Council's Standard Terms & Conditions* or Industry Standard Terms & Conditions e.g. JCT or NEC issued by a relevant professional body must be used wherever possible. Terms and Conditions must be agreed by Legal Services prior to a tender being issued.

130. All *Relevant Contracts*, irrespective of value, shall clearly specify:

- What is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done).
- The provisions for payment (i.e. the price to be paid and when).
- The time, or times, within which the contract is to be performed.
- The provisions for the Council to terminate the contract.

131. In addition, every *Relevant Contract* must also state clearly as a minimum:

- That the contractor may not assign or sub-contract without prior written consent.
- Any insurance requirements.
- Health and safety requirements.
- Ombudsman requirements.
- Data protection requirements, if relevant.
- That charter standards are to be met if relevant.
- Race relations requirements.
- Equality Act requirements.
- Freedom of Information Act requirements.
- Where *Agents* are used to let contracts that *Agents* must comply with the Council's Contract Procedure Rules.
- A right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant.

132. All contracts will be let using the *Council's Standard Terms and Conditions*. The formal advice of the *Assistant Director Law and Governance* must be sought for contracts for which it is not proposed to use the *Standard Terms and Conditions* for example:

- Where it is proposed to use Industry Standard Contracts e.g. NEC Conditions of Contract.
- Where the other party wants to vary the *Council's Standard Terms and Conditions*.
- Where the other party proposes to use their own terms and conditions.
- Those involving leasing arrangements.

Contract Term

133. The contract term is to be set at a length that takes into account of the possibility that the Council may need to withdraw from service provision including the area being contracted for. Consideration needs to be given to a contract length that will achieve value, give flexibility (for instance by including extension clauses in the contract) and avoid excessive lock in periods.

134. It is proposed that contracts for five years will be let on the basis of two years with potential for extension for a two or one year period up to a total of five years. This may not be appropriate in cases where for example a large scale IT system is being

implemented where the implementation may take a period of two years but may well be appropriate for service delivery contracts where there are alternative models of delivery or scope for service reductions.

Contract Formalities

135. *Relevant Contracts* shall be completed as follows:

- Up to £99,999 signature *Director* or their *Authorised Signatory* or an *Authorised Signatory in Legal Services* i.e. person authorised by *Assistant Director Law and Governance*
- £100,000 or above - sealed (see Rule 137).
- Any Contract for performances at the Hippodrome can be signed by the Assistant Director – Community Services.

136. All contracts must be concluded formally in writing before the supply, service or construction work begins, and in any event before payments are made, except in exceptional circumstances, and then only with the written consent of the *Assistant Director Law and Governance*. An award letter is insufficient.

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

Sealing

138. Where contracts are completed by each side adding their formal seal, such contracts shall be signed by the *Assistant Director Law and Governance* or *Authorised Signatory* i.e. person authorised by *Assistant Director Law and Governance* together with the fixing of Council's seal.

139. Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal.

140. A contract must be sealed where:

- The Council may wish to enforce the contract more than six years after its end.
- The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services.
- There is any doubt about the authority of the person signing for the other contracting party.
- The *Total Value* is £100,000 or above.

Bonds and Parent Company Guarantees

141. The *Officer* must consult with the *Group Director of Operations* about whether a *Parent Company Guarantee* is necessary when a *Candidate*:
- Is a subsidiary of a parent company and the *Total Value* exceeds £250,000.
 - Award is based on evaluation of the parent company.
 - There is some concern about the stability of the *Candidate*.
142. The *Officer* must consult with the *Group Director of Operations* about whether a *Bond* is needed:
- Where the *Total Value* exceeds £1,000,000.
 - Where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the *Candidate*.

Prevention of Corruption

143. The *Officer* must comply with the *Code of Conduct for Employees* and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the *Officer* to prove that anything received was not received corruptly. High standards of conduct are obligatory.
144. The following clause must be put in every written Council contract:
- The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract. The attention of the Contractor is drawn to the criminal offences under the Bribery Act 2010.*
 - The Contractor warrants that it has not paid commission nor agreed to pay any commission to any Employee or representative of the Council by the Contractor or on the Contractor's behalf.*
 - Where the Contractor engages in conduct prohibited by clauses detailed above in relation to this or any other contract with the Council, the Council has the right to:*
 - terminate the Contract and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or*

- (b) *recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this clause whether or not the Contract has been terminated.*

Declaration of Interests

145. Employees must be aware that it is a serious criminal offence under the Prevention of Corruption Acts for them to receive or give any gift, loan, reward or advantage in their official capacity 'for doing, or not doing, anything' or 'showing favour, or disfavour to any person'. If an allegation is made against you, it will be for you to demonstrate that any such rewards have not been corruptly obtained.
146. For your own protection, if anyone makes an approach to you which seems to you, or might seem to a third party, to be aimed at obtaining some form of preferential treatment, or in any suspicious circumstances in connection with a contract, you must report the matter to the Assistant Director Law and Governance.

Section 5 - Contract Management

Managing Contracts

147. Where appropriate, taking account of cost, longevity and risk associated with the contract, sponsoring departments are to name contract managers for all new contracts. All such contracts must have a named Council *Contract Manager* and a named contractor manager for the entirety of the contract.
148. *Contract Managers* must have regular review meetings with the *Contractor* to ensure the requirements of the Contract are met.
149. Save as otherwise provided in these Rules, a Contract can only be extended if an optional period of extension was included in the terms and conditions of the original Contract. When considering an extension to a Contract Officers must take into account *Value for Money* implications. In order to extend a Contract the contractor or supplier has to satisfy the requirements set out in the Contract in relation to the extension period.

Risk Assessment and Contingency Planning

150. For all contracts that are considered *Business Critical*, contract managers must:
- Maintain a risk register during the contract period.
 - Undertake appropriate risk assessments and for identified risks.
 - Ensure contingency measures are in place.

Contract Monitoring, Evaluation and Review

151. All contracts which have a value higher than the *EU Threshold* limits, or which are *High Risk*, are to be subject to monthly formal review with the contractor.

152. During the life of the contract, the *Officer* must monitor in respect of:

- Performance
- Compliance with specification and contract cost
- Any *Value for Money* requirements
- User satisfaction and risk management.

153. Where the *Total Value* of the contract exceeds £500,000, the *Officer* must make a written report to the *Economy and Resources Scrutiny Committee* evaluating the extent to which the purchasing need and the contract objectives were met. This should be done normally when the contract is completed.

Definitions Appendix

Agent

A person or organisation acting on behalf of the council or on behalf of another organisation.

Approved List

A list drawn up in accordance with Rules 48 to 54.

Assistant Director Law and Governance

The officer defined as such in the Constitution. Officer responsible for Legal Services, which includes the Corporate Procurement Unit

Assistant Director

The *Officers* defined as such in the *Constitution*.

Authorised Signatory

Officers appointed by Directors to sign on their behalf.

Award Criteria

The criteria by which the successful *Quotation* or *Tender* is to be selected (see further Rules 88 to 99 and 101(g)).

Award Procedure

The procedure for awarding a contract as specified in Rules 65 to 71; 88 to 99; and 119 to 127.

Best Value

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. This terminology has now, in many instances, been superseded by *Value for Money*.

Bond

An insurance policy: if the contractor does not do what it has promised under a contract with the Council, the Council can claim from the insurer the sum of money specified in the bond (often 10 per cent of the contract value). A bond is intended to protect the Council against a level of cost arising from the contractor's failure.

Business Critical

A Contract that is essential to the delivery of Council Services and is one that could have an impact on functions integral to Council service delivery should it fail or go wrong eg Waste Management

Cabinet

The Council's Cabinet as defined in the *Constitution*.

Candidate

Any person who asks or is invited to submit a *Quotation* or *Tender*.

Chief Finance Officer

The Group Director of Operations or such other Officer as may be designated Chief Finance Officer by the Council.

Committee

A Committee that has power to make decisions for the Council, for example a joint committee with another local authority, but not a Scrutiny Committee.

Constitution

The constitutional document approved by the Council which:

- allocates powers and responsibility within the Council and between it and others
- delegates authority to act to the *Cabinet*, *Committees* and *Officers*
- regulates the behaviour of individuals and groups through rules of procedure, codes and protocols.

Consultant

Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the council has no ready access to employees with the skills, experience or capacity to undertake the work.

Contract Manager

The *Officer* appointed by the relevant *Director* to have responsibility for managing the contract.

Contracting Decision

Any of the following decisions:

- A decision of the Procurement Board
- Composition of *Approved Lists*
- Withdrawal of *Invitation to Tender*
- Whom to invite to submit a *Quotation* or *Tender Shortlisting*
- Award of contract
- Any decision to terminate a contract.

Corporate Contract

A contract let by the *Corporate Procurement Unit* to support the Council's aim of achieving *Value for Money*.

Corporate Procurement Unit

The Council's central procurement unit charged with providing strategic direction and advice to secure *Value for Money* in the Council's procurement activities.

Council's Standard Terms & Conditions

Terms and Conditions agreed by the Council and used in all Council contracts.

Dynamic Purchasing System

An electronic system for the purchase of commonly used goods services or works.

Departmental Finance Officer

The most senior *Officer* representing the *Group Director of Operations* or designated by him/her to provide financial advice to the *Director* of the relevant Department.

Director

The Officers defined as such in the *Constitution*.

e-Auction

A secure electronic hosted system by which suppliers bid against each other to reduce prices.

e-Tendering and Contract Management System

The system the Council has adopted to carry out tendering electronically.

EU Procedure

The procedure required by the EU where the *Total Value* exceeds the *EU Threshold*.

EU Threshold

The contract value at which the full regime of the EU public procurement directives apply.

European Economic Area

The 28 members of the European Union, and Norway, Iceland and Liechtenstein.

Financial Procedure Rules

The financial regulations outlining *Officer* responsibilities for financial matters issued by the *Chief Finance Officer* in accordance with the *Constitution*.

Framework Agreement

An agreement between one or more authorities and one or more economic operators, 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.

Government Procurement Agreement

The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the *European Economic Area* are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore.

Assistant Director Law and Governance

Officer responsible for the Governance arrangements for the Authority.

High Risk

A high-risk purchase is one that presents the potential for substantial exposure on the Council's part should it fail or goes wrong.

High Value

A high-value purchase is where the value exceeds the *EU Threshold* values.

Invitation to Tender

Invitation to tender documents in the form required by these Contract Procedure Rules.

Line Manager

The *Officer's* immediate superior or the *Officer* designated by the Director to exercise the role reserved to the line manager by these Contract Procedure Rules.

Nominated Suppliers and Sub-contractors

Those persons specified in a main contract for the discharge of any part of that contract.

Non-commercial Considerations:

- (a) The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ('workforce matters').
- (b) Whether the terms on which contractor's contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only.
- (c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy.
- (d) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons ('industrial disputes').
- (e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors.
- (f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees.
- (g) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support.
- (h) Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959.

Workforce matters and industrial disputes, as defined in paragraphs (a) and (d) above, cease to be non-commercial considerations to the extent necessary or expedient to comply with Best *Value*; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 2006 (*TUPE*) may apply.

Officer

The Officer designated by the *Director* to deal with the contract in question.

Parent Company Guarantee

A contract that binds the parent of a subsidiary company as follows: if the subsidiary company fails to do what it has promised under a contract with the Council, the Council can require the parent company to do so instead.

Procurement Plan

A list of all the planned procurements for the coming year presented to Cabinet to enable them to designate a procurement as Strategic or Non-Strategic

Procurement Board

The main officer body for making procurement decisions in the Council.

Property Procedure Rules

Rules that apply to the acquisition, disposal or transfer of land or property.

Quotation

A quotation of price and any other relevant matter (without the formal issue of an *Invitation to Tender*).

Relevant Contract

Contracts to which these contract procedure rules apply (see Rules 19 and 20).

Economy and Resources Scrutiny Committee

Economy and Resources Scrutiny Committee as defined in the *Constitution*.

SME

Small and medium sized enterprises.

Shortlisting

The process of selecting *Candidates* who are to be invited to quote or bid or to proceed to final evaluation.

Standard Terms and Conditions

The contractual terms that the *Assistant Director Law and Governance* has agreed and that form part of the Councils contract.

Strategic Procurement

A decision that Members believe is high risk, high profile or high value enough to be made by *Cabinet*.

Supervising Officer

The *Line Manager's* immediate superior.

Tender

A *Candidate's* proposal submitted in response to an *Invitation to Tender*.

Tender Record Log

The log kept by the Assistant Director Law and Governance or his representative to record details of *Tenders* (see Rule 111).

TUPE Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No.246)

Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the authority is transferred from one organisation (e.g. private contractor, local authority in-house team) to another (e.g. following a contracting out or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of employees are transferred along with the business.

Value for Money

Value for money is not the lowest possible price; it combines goods or services that fully meet your needs, with the level of quality required, delivery at the time you need it, and at an appropriate price.

VCSE

A non-governmental organization that is value driven and which principally reinvests its surpluses to further social, environmental and cultural objects.