

Teignbridge District Council

Contract Procedure Rules



Contract
Procedure Rules



Teignbridge
DISTRICT COUNCIL
South Devon

Teignbridge District Council

Contract Procedure Rules

September 2015

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A BRIEF GUIDE TO CONTRACT PROCEDURE RULES

These Contract Procedure Rules (issued in accordance with section 135 of the 1972 Local Government Act) are intended to promote good procurement practice and public accountability and deter corruption. Following the rules is the best defence against allegations that a purchase has been made incorrectly or fraudulently.

Officers responsible for purchasing or disposal must comply with these Contract Procedure Rules. They lay down minimum requirements and a more thorough procedure may be appropriate for a particular *contract*. (For example, if Rule 8.1 would normally require that quotes be obtained, it might be appropriate in particular circumstances to seek additional quotations or tender submissions. Equally, it may not always be appropriate to make use of a waiver under Rule 3 even if one might apply or be granted).

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 (or other e-communication systems e.g. e-tendering) fax transmissions as well as hard copy.

- Follow the rules whenever you purchase goods or services or order building work.
- Take all necessary procurement legal, financial and professional advice.
- Declare any personal financial interest in a *contract*. Corruption is a criminal offence.
- Conduct any Value for Money review and appraise the purchasing need.
- Check whether there is an existing *Corporate Contract* or *Framework Agreement* in place you can make use of before undergoing a competitive process.
- Normally allow at least four weeks for submission of *Bids* (not to be submitted by hard copy, fax or e-mail).
- Keep *Bids* confidential.
- Complete a written *contract* or Council order before supply or works begin.
- Identify a contract manager with responsibility for ensuring the *contract* delivers as intended.
- Keep records of dealings with suppliers.
- Assess each *contract* afterwards to see how well it met the purchasing need and quality of delivery requirements.

In accordance with the *Constitution*, the *Section 151 Officer* may propose amendments to these Contract Procedure Rules after consultation with the *Council's Solicitor*, Internal Audit and the Corporate Procurement Officer. Proposed amendments must be submitted to the Audit Scrutiny Committee, with a recommendation to Council for approval, where appropriate.

Terms in *italics* are defined in the Definitions Appendix at the end the rules.

Acknowledgements: *Internal Audit: South Hams District Council / Teignbridge District Council; Corporate Procurement Officer (Shared); CIPFA.*

SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES

1. BASIC PRINCIPLES

All purchasing procedures and the letting of *Concession Contracts* must:

- comply with these Contract Procedure Rules and Financial Instructions (both at Part 4 of the *Constitution*);
- achieve Value for Money for public money spent;
- be consistent with the highest standards of integrity, having regard to the Council's Anti Fraud and Corruption Strategy. The Bribery Act 2010 and the Office of Fair Trading guidance on Anti Competitive Behaviour;
- 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;
- comply with the Council's Procurement Strategies; and
- be followed by *Officers* of the Council in all procurement activities including circumstances where there has been any challenge by the community.

2. OFFICER RESPONSIBILITIES

Officers

- 2.1 *Officers* responsible for purchasing or disposal must comply with these Contract Procedure Rules, *Financial Instructions*, the *Code of Conduct* 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.
- 2.2 Officers must:
- have regard to the Council's purchasing and contract guidance;
 - ensure that the appropriate approved budgetary provision is in place;
 - check whether a suitable *Corporate Contract* exists before seeking to let another *contract*; where a suitable *Corporate Contract* exists, this must be used unless there is an auditable reason not to;
 - keep the records required by Rule 6;
 - take all necessary legal, financial and professional advice.
- 2.3 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) (TUPE) issues are considered and obtain legal advice before proceeding with inviting *Tenders* or *Quotations*.

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Business Leads / Business Managers

2.4 *Business Leads / Business Managers* must:

- ensure that their staff comply with Rule 2.1;
- keep registers of:
 - contracts completed by signature, rather than by the Council's seal (see Rule 16.3) and arrange their safekeeping on Council premises; and
 - waivers recorded under Rule 3.2.

3. WAIVERS, COLLABORATIVE & E-PROCUREMENT ARRANGEMENTS

3.1 The Council and its *Executive* have power to authorise waivers from the requirement to seek quotations or invite *tenders* for specific projects, and any such decision may be a *Key Decision*.

3.2 Where a waiver is necessary because of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to Council services (**Life or Death, Increased Costs / Loss of Income, Limited Markets or Reputation**) the *Officer* must seek the approval of their *Business Manager or Business Lead, Corporate Procurement Officer, Internal Audit, the Leader/Deputy Leader of the Council, and the Chief Executive*, who may jointly approve the waiver. A report must be prepared for the next *Executive* to support the action taken. Terms are defined as:

- **Life or Death** – Is there a significant chance that the life or health of officers, members or the public will be put at real risk?
- **Increased Costs / Loss of Income** – Will the Council incur significant avoidable costs or lose significant income (significant shall be taken to mean material in the sense that it is either material to the project, the service or the Council)?
- **Limited Markets** – Would the Council be wasting its time obtaining quotations as supply of the product or service is demonstrably restricted to one or few businesses (or an *Approved List* if it is recommended by Central Government which evidences that the market has been tested)?
- **Reputation** – Would the Council be criticised for failing to act promptly?

3.3 **No waiver can be used if the EU Procedure applies.** The latest EU procurement limits are available from either the *Corporate Procurement Officer* or Internal Audit.

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- 3.4 All waivers, and the reasons for them, must be recorded. These shall be completed by the *Officer* and signed by their *Business Manager / Business Lead*, Internal Audit, the Leader / Deputy Leader of the Council and the Chief Executive.
- 3.5 Pro-formas must be used and are available on the Council's intranet or from Internal Audit who will monitor the use of waivers and ensure that all waivers are reported to the next Executive and Audit Scrutiny Committees.

Contracts between One or More Public Bodies

- 3.6 Where the Council seeks to provide goods, works or services through its own internal resources it may do so without triggering a procurement exercise (links to Financial Instructions).
- 3.7 Where the Council seeks to provide goods, works or services by entering in to a formal arrangement with another public sector body over which it has some ownership or control it may do so without triggering a procurement exercise where it can be demonstrated that three limited conditions are met, that:
- the Council must exercise over the body to be awarded the *Contract* "a control which is similar to that which it exercises over its own departments"; meaning that the Council must have a power of decisive influence over both strategic objectives and significant decisions of the body awarded the *Contract*; More than 80% of the activities of the body to be awarded the *Contract* must be carried out in the performance of tasks entrusted to it by the Council; and
 - there must be no direct private capital participation in the body to be awarded the *Contract*.
- 3.8 Where the public sector body that is controlled by the Council seeks to provide goods, works or services by entering in to a formal arrangement with its controlling Council or another public sector body controlled by the same Council it may do so without triggering a procurement exercise where it can be demonstrated that a limited condition is met, that:
- there is no direct private capital participation in the body being awarded the *Contract*.
- 3.9 Where the Council seeks to provide goods, works or services by entering in to a formal arrangement with one or more public sector bodies over which it has no control it may do so without triggering a procurement exercise where it can be demonstrated that three limited conditions are met, that:

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- the Council must exercise jointly with other public sector bodies “a control which is similar to that which it exercises over its own departments” over the body to be awarded the *Contract*;
- more than 80% of the activities of the body to be awarded the *Contract* must be carried out in the performance of tasks entrusted to it by the joint public sector bodies; and
- there must be no direct private capital participation in the body to be awarded the *Contract*.

The Council and other public sector bodies can be said to exercise joint control over another body where all of the following conditions are met; that:

- the decision-making bodies of the controlled body are composed of representatives of all participating public sector bodies;
- the participating public sector bodies are able to jointly exert decisive influence over the strategic objectives and significant decisions of the body awarded the *Contract*; and
- the body to be awarded the *Contract* does not pursue any interests which are contrary to those of the controlling public sector bodies.

3.10 A *Contract* concluded exclusively between two or more public sector bodies may not trigger a procurement exercise where it can be demonstrated that three limited conditions are met, that:

- the *Contract* establishes or implements a co-operation between the participating public sector bodies with the aim of ensuring that public services they have to perform are provided with a view to achieving common objectives;
- the implementation of that co-operation is governed solely by considering relating to the public interest; and
- the participating public sector bodies perform on the open market less than 20% of the activities with which the *Contract* is concerned.

3.11 *Officers* must proceed with caution when invoking any of the exceptions given within this section, and advice must be sought from the *Corporate Procurement Officer*.

Collaborative Arrangements

3.12 The *Corporate Procurement Officer* must be consulted prior to commencing a procurement process using any purchasing consortia contracts e.g. Crown Commercial Services (CCS). The terms and conditions of *Contract* applicable to any purchasing consortia arrangement, including the requirement to undertake competition between providers, must be fully complied with.

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- 3.13 In order to secure *Value for Money*, the Council may enter into collaborative procurement arrangements. The *Officer* must consult the *Corporate Procurement Officer* where the purchase is to be made using collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium.
- 3.14 All purchases made via a purchasing consortium are deemed to comply with these Contract Procedure Rules and no waiver is required. However, purchases above the EU Threshold must be let under the EU Procedure, unless the consortium has demonstrated that it has satisfied this requirement already by letting their contract in accordance with the EU Procedures on behalf of the authority and other purchasing consortium members.
- 3.15 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 waiver is required. However, **advice must be sought from the *Corporate Procurement Officer***.
- 3.16 The use of electronic procurement technology enhances the administrative process for tendering (audit trails etc.) but does not negate the requirement to comply with all elements of these contract procurement rules, particularly those relating to competition and Value for Money.

4. RELEVANT CONTRACTS

- 4.1 All *Relevant Contracts* must comply with these Contract Procedure Rules. A *Relevant Contract* is any arrangement made by, or on behalf of, the authority for the carrying out of works or for the supply of goods, materials or services. These include arrangements for:
- the supply of goods (for disposal of goods and assets see the *Financial Instructions*);
 - the hire, rental or lease of goods or equipment;
 - the delivery of services, including (but not limited to) those related to:
 - the recruitment of staff;
 - financial, legal and *Consultancy* services;
 - Development Agreements under certain circumstances (see Section 25 for further details); and
 - *Concession Contracts*.

and where the *Supplier* is:

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- another public sector organisation, to include a town and / or parish council;
- a body wholly or jointly owned or controlled by the *Council*; and
- a third sector organisation, to include social enterprises, not-for-profit organisations or charities.

4.2 *Relevant Contracts* do not include:

- contracts of employment which make an individual a direct employee of the authority; or
- agreements regarding the acquisition, disposal, or transfer of land (for which *Financial Instructions* shall apply); or
- *Section 151 Officer* dealing in the money market or obtaining finance for the Council; or
- contracts made by the *Council's Solicitor* for the appointment of counsel.

SECTION 2: COMMON REQUIREMENTS

5. STEPS PRIOR TO PURCHASE

5.1 The Officer must appraise the purchase, in a manner commensurate with its complexity and value and taking into account any *purchasing guidance*, by:

- ensuring the Social Value (Public Services) Act 2012 is complied with for all service contracts where the Total Value exceeds the EU Threshold;
- taking into account the requirements from any relevant Value for Money review;
- appraising the need for the expenditure and its priority;
- defining the objectives of the purchase and consider whether it is appropriate to tender on the same basis as any existing arrangement (see also Rule 2.2);
- assessing the risks associated with the purchase and how to manage them;
- 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;
- consulting users as appropriate about the proposed procurement method, contract standards and performance and user satisfaction monitoring;
- drafting appropriate terms and conditions to apply to the proposed contract (if other than the Council's standard terms and conditions, the advice of the *Corporate Procurement Officer* and the *Council's Solicitor* must be sought); and
- setting out these matters in writing if the Total Value of the purchase exceeds £7,500.

5.2 The officer must also confirm that:

- there is member 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*; and
- if the purchase is a Key Decision, all appropriate steps have been taken.

6. RECORDS AND REPORTING

6.1 Where the *Total Value* is less than £50,000, the following records must be kept:

- invitations to quote and Quotations;

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A record:

- of any waivers and the reasons for them;
- of the reason if the lowest price is not accepted (Nb. to accept a *Quotation* other than the lowest, the *Officer* must be satisfied that the *Tender* represents the most economically advantageous *Bid* and best value for money. The *Award Criteria* for this should have been set out in advance and evaluation records must be retained. See section 10 for further detail on *Award Criteria*); and
- written records of communications with the successful contractor or an electronic record if a written record of the transaction would normally not be produced.

6.2 Where the *Total Value* exceeds £50,000 the *Officer* must record:

- the method for obtaining *Bids* (see Rule 8.1);
- any *Contracting Decision* and the reasons for it;
- any waiver under Rule 3 together with the reasons for it;
- the *Selection Criteria* in descending order of importance;
- the *Award Criteria* in descending order of importance;
- *Invitation to Tender* documents sent to and received from *Suppliers*;
- pre-tender market research;
- clarification and post-tender negotiation (including minutes of meetings);
- legal advice;
- the contract documents and any variations or extensions;
- post-contract evaluation and monitoring;
- communications with *Suppliers* and with the successful contractor throughout the period of the *Contract*; and
- ongoing checking of the financial position of the successful contractor throughout the period of the *Contract*. (see also Section 5 Contract Management).

6.3 Records required by this rule must be kept for six years after the end of the contract. However, written documents which relate to unsuccessful *Suppliers* must be destroyed after 12 months from award of successful contract, provided there is no dispute about the award.

6.4 Where the ***Total Value exceeds the EU Threshold*** the *Officer* shall draw up a written report which shall include at least the following:

- the name and address of the *Council*, the subject-matter and value of the *Contract*, *Framework Agreement* or *Dynamic Purchasing System*;
- where applicable, the results of the *Selection* stage and reduction in *Tenderers*, namely:-

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- the names of the selected *Tenderers* and the reason for their selection; and
- the names of the rejected *Tenderers* and the reasons for their rejection;
- The reasons for the rejection of *Tenders* found to be abnormally low; the name of the successful *Tenderer* and the reasons why its *Tender* was selected and, where known:-
 - the share (if any) of the *Contract* or *Framework Agreement* which the *Tenderer* intends to subcontract to third parties; and
 - the names of the main contractor's subcontractors (if any);
- for *Competitive Procedures with Negotiation* and *Competitive Dialogue* the circumstances which justify the use of those procedures;
- for *Negotiated Procedures without Prior Publication*, the circumstances which justify the use of this procedure
- where applicable, the reasons why the *Council* has decided not to award a *Contract* or *Framework Agreement* or to establish a *Dynamic Purchasing System*
- where applicable, the reasons why means of communication other than electronic means have been used for the submission of *Tenders*;
- where applicable, conflicts of interest and subsequent measures taken

Where the *Contract Award Notice* contains the information required above, the *Council* may refer to that notice. .

7. ADVERTISING FRAMEWORK AGREEMENTS AND DYNAMIC PURCHASING SYSTEMS

7.1 Identifying and Assessing Potential Candidates

Identifying:

- 7.1.1 Wherever practicable *Officers* shall ensure that where the *Total Value* of the proposed *Contract* does not exceed £50,000 they shall invite a minimum of three suppliers, one of whom must have a head office which is registered within the *Council's* boundaries. *Officers* shall be seen to alternate the Suppliers to whom quotation documentation is sent so as to ensure fair competition within the market.
- 7.1.2 *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

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bidders from other member states, the wider the coverage of the advertisement should be. Advertisements must be placed on the *Council's* electronic tendering system and *Contracts Finder*. Advertisements must include at least:

- the time by which any interested *Supplier* must respond to the opportunity;
- how and to whom the *Supplier* is to respond; and
- any other requirements for participating in the procurement.

Where the *Council* published information on *Contracts Finder* it shall by means of the internet offer unrestricted and full direct access free of charge to the relevant contract documents and specify in the information published on *Contracts Finder* the internet address at which those documents are available.

In addition to the above, advertisements may also be placed in:

- the Council's website;
- the Council's electronic tendering system;
- national official journals, or
- the Official Journal of the European Union (OJEU) / E Notices / Tenders Electronic Daily (TED) (even if there is no requirement within the EU Procedure).

Notices must be placed in the OJEU for *Contracts* with a value exceeding the *EU Threshold* and may take the form of a *Contract Notice for Prior Information Notice*.

7.1.3 For proposed contracts that are expected to exceed £50,000, assessment and selection will be in conjunction with the *Corporate Procurement Officer*.

Assessing:

7.1.4 The *Council* shall not include a pre-qualification stage in a procurement under the *EU Threshold*.

In any event the *Council* may ask *Suppliers* to answer *Selection* questions to assess their ability to meet requirements or minimum standards of suitability, capability, legal status or financial standing, only if each such question is:

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

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7.2 Approved Lists

- 7.2.1 *Approved Lists* will not be maintained due to the costs of proper administration and the need to ensure that competition is maximised.
- 7.2.2 Suppliers interested in doing business with the Council must register on the Council's electronic tendering system, which is available at www.supplyingthesouthwest.org.uk
- 7.2.3 A register of pre-qualified contractors and *Consultants* maintained by or on behalf of central government (e.g. Constructionline, Accredited) will not be deemed to be an *Approved List* for the purpose of these Contract Procedure Rules.

7.3 Framework Agreements

- 7.3.1 A *Framework Agreement* is an arrangement of one or more contracting authorities with one or more suppliers in order to establish the terms governing the contracts awarded during a given period.
- 7.3.2 The term of a *Framework Agreement* must not exceed four years. There must be one (a single-provider framework), or more than two (2) (multi-provider framework) *Suppliers* within an agreement under EU procurement law. The Council's *Corporate Procurement Officer* must always be consulted before any action is taken.
- 7.3.3 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 (also known as a *direct award*); or
 - 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; and
 - awarding the 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*.

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- 7.3.4 Contracts based on a *Framework Agreement* may under no circumstances entail substantial modifications to the terms laid down in that *Framework Agreement*.
- 7.3.5 When a *Framework Agreement* has been selected for use, only the *Suppliers* that appear on the agreement may be approached to provide the *Contract*. Multiple *Framework Agreements* may not be selected for use to procure one single *Contract*.
- 7.3.6 Contracts may be awarded beyond the life of a *Framework Agreement* provided that such contracts are not awarded improperly or in a way that seeks to distort competition. As an example it would serve to distort competition to award a *Contract* that significantly exceeded the life of the *Framework Agreement* where it was not common practice or expected by the market to do so.
- 7.3.7 A *Contract* procured under a *Framework Agreement* by another user may not be used by way of avoiding running a further competition, unless expressly permitted by the terms of the *Framework Agreement* or resultant call-off contract.
- 7.3.8 The *Standstill* obligations need only be applied to contracts awarded against a *Framework Agreement* that will exceed the *EU Threshold*.

7.4 Dynamic Purchasing System

- 7.4.1 A *Dynamic Purchasing System* is similar to a *Framework Agreement* insofar as it is an arrangement of one or more contracting authorities with one or more suppliers in order to establish the terms governing the contracts awarded during a given period, the term must not exceed four years and its *Total Value* must be the total of all contracts that are anticipated to be awarded under it.

The way in which the *Dynamic Purchasing System* is different to a *Framework Agreement* is that additional *Suppliers* can be added throughout the life of the arrangement and the life of the arrangement can be for a period, which is proportionate to the nature of the works, services or goods to be procured under it, as specified by the *Council*.

- 7.4.2 In opening up access to *Suppliers* to the *Dynamic Purchasing System* the *Officer* must:
- offer unrestricted, direct and full access to the procurement documents by electronic means at all times throughout the life of the *Dynamic Purchasing System*;

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- allow new applications to be submitted throughout the life of the Dynamic Purchasing System;
- complete the evaluation of a newly submitted application within ten days of its receipt;
- admit to the Dynamic Purchasing System all new Suppliers that satisfy the Selection criteria, and
- notify Suppliers of their admission to the Dynamic Purchasing System or rejection of their application.

7.4.3 In awarding a *Contract* under the *Dynamic Purchasing System* the *Officer* must:

- place an advertisement against the *Dynamic Purchasing System* to notify Suppliers of the requirement to award a *Contract*. Where the *Dynamic Purchasing System* has been established in accordance with the EU procurement rules, i.e. where the *Total Value* exceeds the *EU Threshold*, this must take the form of a simplified *Contract Notice*;
- evaluate any new applications in response to the advertisement prior to issuing *Invitations to Tender* under the *Dynamic Purchasing System*.

All *Suppliers* admitted to the *Dynamic Purchasing System* must be given an opportunity to respond to the *Invitation to Tender*, and the *Contract* shall be awarded to the *Supplier* that submits the best *Bid* in accordance with the *Selection* and *Award Criteria* set out in the original advertisement or *Contract Notice*.

7.4.4 The Council's *Corporate Procurement Officer* must always be consulted before any action is taken to establish a *Dynamic Purchasing System*.

8. COMPETITION REQUIREMENTS FOR PURCHASE AND PARTNERSHIP ARRANGEMENTS

8.1 Purchasing: Requirements to Obtain Quotations or Tenders

8.1.1 The **Total Value** of a *Contract* is the whole of the value or estimated value (in money or equivalent value) for a single purchase in the following circumstances:

- the total amount payable, net of VAT, as estimated by the Authority, including any form of option and any renewals of the contracts as explicitly set out in the procurement documents, to include any prizes or payments that the Authority intends to make to the Applicant/s;
- where the purchase is regular in nature or is intended to be renewed within a given period, the calculation of the estimated contract value shall be based on either of the following:—
 - i. the total actual value of the successive contracts of the same type awarded during the preceding 12 months or financial year adjusted, where possible, to take account of the changes in quantity or value which would occur in the course of the 12 months following the initial contract;
 - ii. the total estimated value of the successive contracts awarded during the 12 months following the first delivery, or during the financial year where that is longer than 12 months.
- where the *Contract* does not indicate a total price, the basis for calculating the estimated *Contract* value shall be the following:—
 - i. in the case of fixed-term contracts where that term is less than or equal to 48 months, the total value for their full term;
 - ii. in the case of contracts without a fixed term or with a term greater than 48 months, the monthly value multiplied by 48.
- where a proposed work or a proposed provision of services may result in contracts being awarded in the form of separate lots, account shall be taken of the total estimated value of all such lots;
- where the *Contract* relates to the leasing, hire, rental or hire purchase of products, the value to be taken as a basis for calculating the estimated contract value shall be as follows:—
 - i. for fixed-term *Contracts*, where that term is less than or equal to 12 months, the total estimated value for the term of the contract or, where the term of the contract is greater than 12 months, the total value including the estimated residual value;
 - ii. for *Contracts* without a fixed term, or public contracts the term of which cannot be defined, the monthly value multiplied by 48.

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- for *Contracts* for insurance services, the premium payable and other forms of remuneration;
- for *Contracts* for banking and other financial services, the fees, commissions payable, interest and other forms of remuneration;
- for design *Contracts*, the fees, commissions payable and other forms of remuneration;
- where a Authority is comprised of separate operational units, account shall be taken of the total estimated value for all those units except where the separate operational unit is independently responsible for its procurement, or certain categories of its procurement, the values may be estimated at the level of the unit in question;
- in the case of *Framework Agreements* and *Dynamic Purchasing Systems*, the value to be taken into consideration shall be the maximum estimated value, net of VAT, of all the *Contracts* envisaged for the total term of the *Framework Agreement* or the *Dynamic Purchasing System*;
- in the case of innovation partnerships, the value to be taken into consideration shall be the maximum estimated value, net of VAT, of the research and development activities to take place during all stages of the envisaged partnership as well as of the supplies, services or works to be developed and procured at the end of the envisaged partnership;
- for *Works Contracts*, the calculation of the estimated value shall take account of both the cost of the *Works* and the total estimated value of the *Goods* and *Services* that are made available to the contractor by the Authority provided that they are necessary for executing the *Works*.

8.1.2 The general rules when calculated the *Total Value* of a *Contract* are as follows:

- the choice of the method used to calculate the estimated value of a *Contract* shall not be made with the intention of excluding it from the scope of the Contract Procedure Rules;
- a *Contract* shall not be subdivided with the effect of preventing it from falling within the scope of the Contract procedure Rules;
- the estimated value shall be calculated as at the moment at which the call for competition is sent or, at the moment at which the authority commences the procurement procedure; and
- the *Total Value* shall be that part of the main *Contract* to be fulfilled by the *Nominated Supplier* or *Sub-contractor*.

8.1.3 The following procedures apply where there are no other procedures which take precedence (such as agency agreements with government). If in doubt, *Officers* must seek the advice of the *Corporate Procurement Officer*.

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8.1.4 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. *Short listing* shall be done by the persons specified in the third column.

| Total Value (excl. VAT) | Award Procedure | Short listing |
|---|---|--|
| Up to £7,500 | A minimum of one <i>Quotation</i> , but good practice to seek most favourable prices and terms, having regard to the Council's Procurement Strategy. | <i>Officer</i> - See also <i>Financial Instructions</i> . |
| £7,501 - £50,000 | A minimum of three written <i>Quotations</i> . | <i>Officer and Business Manager</i> . |
| £50,001 – EU Threshold | <i>Invitation to Tender</i> by advertisement. | <i>Officer and Business Manager</i> in consultation with the <i>Corporate Procurement Officer</i> . |
| Above EU Threshold | EU Procedure or, where this does not apply, <i>Invitation to Tender</i> by advertisement. | <i>Officer, Business Manager and Business Lead</i> in consultation with the <i>Corporate Procurement Officer</i> . |
| £50,001 – EU Threshold | All purchases made via a local authority purchasing and distribution consortium are deemed to comply with these Contract Procedure Rules and no waiver is required e.g. Devon Procurement Services. However, purchases above the <i>EU Threshold</i> must be let under the EU Procedure, unless the consortium has satisfied this requirement already. | See paragraph 3.14. |
| All values. Collaborative Contracts | The <i>Corporate Procurement Officer</i> must be consulted prior to commencing any procurement process using collaborative contracts. The terms and conditions of <i>Contract</i> applicable to any collaborative <i>Contract</i> , including the requirement to undertake competition between providers, must be fully complied with. | See paragraph 3.15. |

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| Total Value (excl. VAT) | Award Procedure | Short listing |
|-------------------------|---|--|
| All values. ICT | All system developments and purchases of computer equipment or software must be approved by the Council's designated ICT Manager (currently Strata Service Solutions Ltd) and awarded in line with these Rules. | <i>Officer, Business Manager and the Council's designated ICT Manager in consultation with the Corporate Procurement Officer</i> |

8.1.5 Where it can be demonstrated that there are insufficient suitably qualified *Candidates* to meet the competition requirement, all suitably qualified *Suppliers* must be invited to quote and *Tender* and the *Corporate Procurement Officer* informed. If it can be clearly demonstrated that less than the required quotations are available, then the Waiver procedure in line with paragraph 3 must be followed.

8.1.6 Where the *EU Procedure* is required, the *Officer* shall consult the *Corporate Procurement Officer*, as appropriate, to determine the method of conducting the purchase. See table at 8.1.

8.1.7 Where the Council procures on behalf of itself and other partners (acting as lead authority, the *Total Value* will be the overall value of the *Contract* and not the element of cost that applies to the Council itself.

8.1.8 Where procurement is for a service to be shared between authorities, it must be stated in advance both how the costs are to be apportioned between the partners and where the ownership of any assets falls.

8.2 Collaborative and Partnership Arrangements

8.2.1 Collaborative and partnership arrangements are subject to all UK and EU procurement legislation and must follow these Contract Procedure Rules. If in doubt, *Officers* must seek the advice of the *Council's Solicitor* and the *Corporate Procurement Officer*.

8.3 The Appointment of *Consultants* to Provide Services

8.3.1 Construction *Consultants*, to include architects, engineers and surveyors, financial and management *Consultants*, legal advisors and *Consultants* and any other professional persons considered *Consultants* as per the definition provided shall be selected and commissions awarded in accordance with the limits and procedures detailed within these Contract Procedure Rules and as outlined at Rule 8.1.1.

8.3.2 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

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subject to completion of a formal letter or *Contract* of appointment to be in the form agreed by the *Council's Solicitor*.

- 8.3.3 Records of consultancy appointments shall be maintained in accordance with Rule 6.
- 8.3.4 *Consultants* shall be required to provide evidence of, and maintain professional indemnity insurance policies to the satisfaction of the Council's Insurance Officer for the periods specified in the respective agreement.
- 8.3.5 *Officers* must be aware of the Council's duty to assess the employment status of individuals and to assess whether they will be working for the Council in an "employed capacity" or "self employed". The **HM Revenue and Customs checklist** must be used in the assessment of status and if the individual could be deemed as employed, the Council's recruitment and payroll procedures must be followed.

8.4 Contracts to Provide Services to External Purchasers

- 8.4.1 The *Council's Solicitor*, *Corporate Procurement Officer* and *Financial Instructions* must be consulted where contracts to work for organisations other than the authority are contemplated.

9. PRE-TENDER MARKET RESEARCH AND CONSULTATION

- 9.1 The *Officer* responsible for the purchase: may, prior to the issue of the *Invitation to Tender* or *Quotation*, consult potential suppliers 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 *Supplier*.
- 9.2 The *Officer* may seek or accept advice from potential *Suppliers* that can be used in the planning and conduct of the procurement procedure, provided that it does not have the effect of distorting competition and does not result in the violation of the principles of non-discrimination and transparency.
- 9.3 The *Officer* shall take appropriate measures to ensure that competition is not distorted, including:
- communicating to the other *Tenderers* any relevant information exchanged resulting from the involvement of the *Supplier/s*; and
 - fixing adequate time limits for the receipt of *Tenders*.

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- 9.4 *Supplier/s* that have assisted the *Officer* in preparing the procurement procedure shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to treat all *Suppliers* equally and *Supplier/s* shall be given the opportunity to prove that their involvement in preparing the procurement procedure is not capable of distorting competition.
- 9.5 For service contracts where the *Total Value* will exceed the *EU Threshold* the *Officer* must give due consideration to the Social Value (Public Services) Act 2012 prior to the commencement of the procurement process.

10. STANDARDS AND AWARD CRITERIA

- 10.1 The *Officer* must define the *Selection Criteria* that are related and proportionate to the subject matter of the *Contract*. These shall form a stage one assessment of whether a Tenderer may progress with a *Tender* process, whether from the *Pre-Qualification Questionnaire (PQQ)* to *Tender* stage or from the *Selection* stage evaluation to the *Award* stage evaluation in an open *Tender*. The criteria to be assessed against may be chosen from the following:
- criteria for the mandatory exclusion of the *Supplier*, such as conspiracy, prior criminal convictions, evidence of corruption, bribery, fraud, terrorism, money laundering, tax evasion, etc. (this list is not exhaustive);
 - criteria for the discretionary exclusion of the *Supplier*, such as bankruptcy, grave professional misconduct, evidence of distorting competition, conflict of interest, significant deficiencies in the delivery of a prior public contract, etc. (this list is not exhaustive);
 - information as to economic and financial standing; such as, insurances, statements of accounts, statements of turnover, etc. (this list is not exhaustive); and
 - information as to technical or professional ability; such as
 - the *Supplier's* professional ability, taking into account in particular that economic operator's skills, efficiency, experience and reliability;
 - evidence of a sufficient level of experience demonstrated by suitable references from contracts performed in the past; and
 - evidence that the *Supplier* possesses the necessary human and technical resources and experience to perform the contract to an appropriate quality standard (this list is not exhaustive).
- 10.2 The *Officer* shall include within its procurement procedures the Crown Commercial Services Standard Pre-Qualification Questionnaire for the

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purposes of assessing the *Selection* criteria. This shall apply to all procurement procedures with the exception of contract for *Works*, which can include the PAS 91 standard for assessing the *Selection* criteria.

The *Corporate Procurement Officer* must be consulted where the *Total Value* of the *Contract* is likely to exceed the *EU Threshold* and in any event to provide advice and guidance concerning the *Crown Commercial Services Pre-Qualification Questionnaire* to ensure that the questions are related and proportionate to the subject matter of the contract.

10.3 *Selection Criteria* must not include:

- *Award Criteria*;
- *Non-commercial Considerations* (See Definitions Appendix); and
- criteria that is not related and proportionate to the subject matter of the *Contract*.

10.4 The *Officer* must ascertain what are the relevant British or equivalent European or international standards which are linked to the subject matter of the *Contract* and are appropriate to define characteristics of the *Works*, *Goods* or *Services* that are the subject-matter of the *Contract*. The *Officer* must include those standards which are necessary properly to describe the required quality. This includes sustainability, environmental, and health and safety standards. The *Council's Solicitor* and *Corporate Procurement Officer* must be consulted if it is proposed to use standards other than European standards.

10.5 The *Officer* must set out the technical specification in the procurement documents that lay down the characteristics required of the *Works*, *Services* or *Goods*, which can include the following:

- levels of environmental and climate performance;
- design for all requirements (including accessibility for disabled persons);
- performance;
- safety or dimensions;
- procedures concerning quality assurance;
- packaging;
- rules relating to design and costing; and
- inspection and acceptance conditions, etc. (this list is not exhaustive).

10.6 The *Officer* must define *Award Criteria* that are appropriate to the purchase and designed to secure an outcome giving Value for Money for the authority. The basic criteria shall be:

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- 'Lowest price' where payment is to be made by the authority when the *Award Criteria* is price alone;
- 'Highest price' if payment is to be received; or
- 'Most economically advantageous', where considerations in addition to price also apply.

If the former criterion is adopted, it must be further defined by reference to sub-criteria which may refer only to relevant considerations. The criteria to be assessed against may be chosen from the following:

- quality, including technical merit, aesthetic and functional characteristics, social, environmental and innovative characteristics;
- organisation, qualification and experience of staff assigned to perform the contract;
- after-sales service and technical assistance; and
- cost, on the basis of a fixed price or life-cycle costing, etc. (this list is not exhaustive)

Award Criteria must be accompanied by the relative weightings ranked in order of importance to the Council in the context of the specific procurement and must be linked to the subject-matter of the *Contract*.

10.7 *Award Criteria* must not include:

- *Selection Criteria*;
- Non-commercial Considerations;
- matters which discriminate against suppliers, irrespective of size, from the European Economic Area or signatories to the Government Procurement Agreement; and
- criteria that is not related and proportionate to the subject matter of the *Contract*.

11. **PROCUREMENT DOCUMENTATION**

11.1 Council *Officers* must prepare their *Procurement Documentation* using the Council's standard templates, which are available on the Council's Intranet site or via the *Corporate Procurement Officer*.

11.2 The *Procurement Documentation* shall state that no *Bid* will be considered unless it is received by the date and time stipulated. No *Bid* delivered in contravention of this clause shall be considered under any circumstances.

11.3 All *Procurement Documentation* shall include the following:

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- a specification that describes the authority's requirements in sufficient detail to enable the submission of competitive offers;
- a requirement for *Suppliers* to declare that the *Bid* content, price or any other figure or particulars concerning the *Bid* have not been disclosed by the *Supplier* to any other party (except where such a disclosure is made in confidence for a necessary purpose);
- a requirement for *Suppliers* to complete fully and sign all *Bid* documents including a form of Tender and certificates relating to canvassing and non-collusion;
- notification that *Bids* are submitted to the Council on the basis that they are compiled at the *Supplier's* expense;
- in the event that the *Contract* will not be divided in to separate *Lots*, the procurement documents will indicate the main reasons why not
- 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;
- notification that no *Bid* will be considered unless it is submitted via the Council's approved electronic tendering system;
- a stipulation that any Tenders submitted by fax or e-mail shall not be considered, see Rule 13.3 re. electronic tendering;
- the method by which any arithmetical errors discovered in the submitted *Bids* is to be dealt with. In particular, whether the overall price prevails over the rates in the *Tender* or vice versa;
- instructions to *Suppliers* concerning the procurement process and *Procurement Documentation* and information concerning the contract opportunity;
- the pricing schedule, schedule of rates, whole life costing schedule or other such appropriate pro-forma for gathering the *Supplier's* pricing;
- a requirement for *Suppliers* to indicate in its *Tender* any share of the *Contract* that it intends to subcontract to third parties and details of those subcontractors, if known; and
- a requirement for *Suppliers* to indicate in its *Tender* whether it is bidding as part of a consortium and details of the other consortia members.

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- 11.4 All *Suppliers* invited to *Bid* must be issued with the same information at the same time and be subject to the same conditions. Any supplementary information must be given on the same basis.
- 11.5 All *Procurement Documentation* must specify the goods, service or works that are required, together with the terms and conditions of *Contract* that will apply (see Rule 16).
- 11.6 The *Procurement Documentation* must state that the Council is not bound to accept any *Quotation* or *Tender*, either as a whole or in part.

12. **SHORTLISTING**

- 12.1 The *Officer* will not include a Pre-Qualification stage in any procurement under the relevant *EU* Threshold. *Officers* may reject *Bids* from *Suppliers* submitted against procurement procedures under this threshold only in accordance with the mandatory or discretionary rejection *Selection* criteria.
- 12.2 Where the procurement exceeds the *EU* Threshold, any *shortlisting* must be done in accordance with the permitted *Selection Criteria*.
- 12.3 Evaluation criteria must be transparent and any sub-criteria specified. *Shortlisting* records must be kept and held for the period specified in the Council's Document Retention Policy and Rule 6.
- 12.4 Where the *Contract* is subdivided in to *Lots* the procurement documents shall indicate whether *Tenders* may be submitted for one, for several or for all of the *Lots*.
- 12.5 Where the *Contract* is subdivided in to *Lots* the procurement documents may state the number of *Lots* that may be awarded to one *Supplier* and any criteria or rules that will be applied in determining the way in which the *Lots* will be awarded.
- 12.6 *Officers* must contact the *Corporate Procurement Officer* prior to implementing *shortlisting* criteria in to their procurement documents.
- 12.7 The *officers* responsible for *shortlisting* are specified in Rule 8.1.4.

13. **SUBMISSION, RECEIPT AND OPENING OF TENDERS / QUOTATIONS**

- 13.1 *Suppliers* 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

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of *Tenders*. The *EU Procedure* lays down specific time periods (see the Council's Purchasing Guidance on the Council's Intranet site).

- 13.2 All *Tenders* must be submitted electronically, through the Council's approved and secure electronic tendering system.
- 13.3 *Tenders* received by fax or other electronic means (e.g. email) must be rejected.
- 13.4 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; and
 - recorded immediately on receipt in the *Tender Register*.
- 13.5 *Tenders* received after the set date and time must not be accepted and the *Corporate Procurement Officer* informed of late submissions. For the purposes of these rules the time will be deemed to be at the first stroke e.g. noon will be 12.00.00.
- 13.6 The Democratic Services section must ensure that all *Tenders* are opened at the same time when the period for their submission has ended. Where the *Total Value* is more than the *EU Threshold*, the *Corporate Procurement Officer* shall also attend.
- 13.7 Upon opening, a summary of the main terms of each *Tender* (i.e. significant issues that are unique to each *Tender* submission and were not stated in the *Tender* invitation documents such as *Tender* sum) must be verified on the electronic tendering system and recorded simultaneously in the *Tender Register*.

14. CLARIFICATION PROCEDURES AND POST-TENDER NEGOTIATION

- 14.1 Providing clarification of an *Invitation to Tender* to potential or actual *Suppliers* is permitted:
 - in writing via the Council's electronic tendering system;
 - at a meeting, provided that a written record is made of the meeting; and
 - in a way that is fair, transparent and equal to all participants.
- 14.2 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

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the rule. In particular, they must not be conducted in an *EU Procedure* where this might distort competition, especially with regard to price. If in doubt, seek professional advice from the *Corporate Procurement Officer*.

- 14.3 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 *Suppliers* have been informed. *Officers* appointed by a *Business Lead* 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.
- 14.4 Post-tender negotiation must only be conducted in accordance with the guidance issued by the *Corporate Procurement Officer* who 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.
- 14.5 Where post-tender negotiation results in a fundamental change to the specification (or contract terms) the *Contract* must not be awarded but re-tendered.

15. EVALUATION, AWARD OF CONTRACT, DEBRIEFING CANDIDATES

- 15.1 Apart from the debriefing required or permitted by these Contract Procedure Rules, the confidentiality of *Quotations*, *Tenders* and the identity of *Suppliers* must be preserved at all times and information about one *Supplier's* response must not be given to another *Supplier*.
- 15.2 *Tenders* and *Quotations* must be evaluated and awarded in accordance with the *Selection* and *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.
- 15.3 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*.
- 15.4 *Officers* may use *Electronic Auctions* as a means of driving additional *Value for Money* and as part of the *Award Criteria*, where this process is completed using the Council's electronic tendering portal. Where the *Officer* wishes to use such a tool, the *Corporate Procurement Officer* must be contacted to offer assistance. *Electronic Auctions* may also be used for seeking *Bids* in sale transactions, such as land, where the highest possible price is sought from an applicant. (Links to 'Disposals' in Financial Instruction).

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- 15.5 *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. Awarding of contracts that are expected to exceed the approved budget sum shall be referred back to the *Executive* or the *Section 151 Officer* as appropriate, in line with the Scheme of Delegation.
- 15.6 Where the *Total Value* is over £50,000, the *Officer* must notify all *Suppliers* in writing simultaneously and as soon as possible of the intention to award the contract to the successful *Supplier* and include the reasons why for unsuccessful bidders. Where an unsuccessful *Supplier* 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.
- 15.7 Where the **Total Value will exceed the EU Threshold** the *Officer* must notify all *Suppliers* in writing simultaneously and as soon as possible of the intention to award the *Contract* to the successful *Supplier*, unless it is known sooner in the procurement process that a *Supplier* has been unsuccessful, in which case the *Officer* must notify the *Supplier* soonest with as much of the information required at 15.8 below as possible. (See 15.9 for further details). The latter applies most particularly, but not exclusively, in the case of a Restricted Procedure whereby the *Officer* must communicate the list of shortlisted *Suppliers* to those that have not been shortlisted.
- 15.8 The letters to the unsuccessful *Suppliers* must contain:
- the criteria for the award of the *Contract*;
 - the reasons for the decision, including the characteristics and relative advantages of the successful *Tender*, the score (if any) obtained by:
 - the *Supplier* which is to receive the notice; and
 - the *Supplier* to be awarded the *Contract*, or to become a party to a *Framework Agreement* or *Dynamic Purchasing System*;
 - the name of the *Supplier* to be awarded the *Contract*, or to become a party to a *Framework Agreement* or *Dynamic Purchasing System*; and
 - a precise statement of either:
 - when the *Standstill Period* is expected to end and, if relevant, how the timing of its ending might be affected by any and, if so what, contingencies; or
 - the date before which the Council will not enter into the *Contract* or conclude the *Framework Agreement* or *Dynamic Purchasing System*.
- 15.9 The *Officer* must provide a *Standstill Period* of at least ten working days, where the communication is made electronically (fifteen days if not) to allow unsuccessful *Suppliers* the opportunity of challenging the decision before

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the *Officer* awards the *Contract*. The *Standstill Period* shall end at midnight on the final day of *Standstill* and no sooner. Where the last day of the *Standstill Period* is not a working day, the *Standstill Period* is extended to midnight at the end of the next working day. If the decision is challenged by an unsuccessful *Supplier* then the *Officer* shall not award the *Contract* and shall immediately seek the advice of the *Council's Solicitor* and *Corporate Procurement Officer*.

- 15.10 Where the *Supplier* has been informed of the fact that they have not been successful at an early stage in the procurement process, they must be provided within fifteen days of any request in writing from said *Supplier*, with the reasons that they were unsuccessful.

SECTION 4: CONTRACT AND OTHER FORMALITIES

16. CONTRACT DOCUMENTS

16.1 Relevant Contracts

16.1.1 All *Relevant Contracts* above £7,500 shall be **in writing** in a form approved by the *Council's Solicitor*.

16.1.2 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; and
- The provisions for the Council to terminate the contract.

16.1.3 The Council's purchase orders or standard terms and conditions issued by a relevant professional body must be used for simple purchases of goods. If any doubt exists, the advice of the *Council's Solicitor* and *Corporate Procurement Officer* must be sought.

16.1.4 In addition, every *Relevant Contract* of purchase **over £50,000** must also state clearly as a minimum:

- Health and Safety requirements (where applicable and proportionate);
- sustainability and environmental management requirements (where applicable and proportionate);
- Social Value Act requirements (where applicable, i.e. for service *Contracts* with a *Total Value* in excess of the *EU Threshold*);
- Equality Act 2010 requirements (where applicable and proportionate);
- that the contractor may not assign or sub-contract without prior written consent;
- any insurance requirements;
- Ombudsman requirements;
- data protection requirements, if relevant;
- that charter standards are to be met if relevant;
- 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;
- any confidentiality requirements;
- tax evasion and avoidance requirements;
- a prompt payment clause stating that payment of undisputed invoices will be made within 30 days by contractors and subcontractors;

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- a clause concerning technical staff where these are inherent to the successful outcome of the *Supplier's Bid* giving a requirement for the *Supplier* to notify the Authority where they intend to replace those members of staff; and
- termination clauses compliant with the Public Contracts Regs 2015.

16.1.5 The formal advice of the *Council's Solicitor* must be sought for contracts where any of the following apply:

- where the Total Value exceeds £50,000; or
- below £50,000 if other than the Council's standard terms and conditions are to be used; or
- those involving leasing arrangements (*Section 151 Officer* to be advised); or
- where it is proposed to use a supplier's own terms; or
- those involving the purchase of application software with a Total Value of more than £50,000; or
- those that are complex in any other way.

16.2 Contract Formalities

16.2.1 Agreements shall be completed as follows:

| Total Value | Method of Completion | By |
|---|---|--|
| Purchase orders - up to £50,000 | Electronic Order or Signature | Authorised officer (see Rule 16.2.3) |
| Contracts and licences up to £50,000 with the Council's Standard Terms and Conditions | Signature | <i>Business Lead / Business Manager</i> or Nominated Deputy (Rule 16.2.3) |
| Contracts and licences up to £50,000 with Non Standard Terms and Conditions | Signature | <i>Business Lead / Business Manager</i> , on the advice of the <i>Council's Solicitor</i> (Rule 16.2.3) |
| Above £50,000 or if any of para 16.1.5. | Signature or Sealing (unless advised by the <i>Council's Solicitor</i> that sealing is not necessary) | <i>Business Lead</i> or the <i>Council's Solicitor</i> (See also Rule 16.3) |
| ICT - system developments and purchases of ICT equipment or software | Method of completion in line with limits above | As above, except in all cases to involve the <i>Council's designated ICT Manager</i> (Currently Strata Service Solutions Ltd). |

SECTION 4: CONTRACT AND OTHER FORMALITIES

- 16.2.2 All contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the *Council's Solicitor* or *Section 151 Officer*. An award letter is insufficient.
- 16.2.3 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. The use of Letters of Intent (which are binding for the Council) should be avoided, but in exceptional circumstances they may be used with the approval of and review by the *Council's Solicitor* before issue. The same rules relating to signatures apply.
- 16.2.4 Any new *Contract* should not be signed until the *Contract* it replaces is either ended or under notice.
- 16.2.5 Depending on the circumstances an officer of the Council may be subject to disciplinary action if he / she signs a *Contract* without being specifically authorised to do so.
- 16.2.6 All original contracts must be must given to the *Council's Solicitor* for secure storage and recording in the Council's Contract Register. It is the responsibility of the *Officer* to ensure that this happens, only copies of contracts should be held within services. An electronic copy must be sent to the *Corporate Procurement Officer*.
- 16.2.7 Contract award notices must be placed on the *Council's* electronic tendering system and *Contracts Finder*.

16.3 Sealing

- 16.3.1 Where appropriate contracts are completed by each side adding their formal seal. The fixing of the Council's seal must be witnessed by a further officer on behalf of the *Council's Solicitor*.
- 16.3.2 Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal. The seal must not be affixed except in accordance with the Council's *Constitution*.
- 16.3.3 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, or

SECTION 4: CONTRACT AND OTHER FORMALITIES

- there is any doubt about the authority of the person signing for the other contracting party.

17. **BONDS AND PARENT COMPANY GUARANTEES**

17.1 The *Officer* must consult the *Section 151 Officer* about whether a *Parent Company Guarantee* is necessary when a *Supplier* is a subsidiary of a parent company and:

- the Total Value exceeds £50,000, or
- award is based on evaluation of the parent company, or there is some concern about the stability of the *Supplier*.

17.2 The *Officer* must consult the *Section 151 Officer* about whether a *Bond* is needed:

- where the Total Value exceeds £1,000,000, or
- 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 i.e. following a formal risk assessment.

18. **PREVENTION OF CORRUPTION AND ANTI COMPETITIVE BEHAVIOUR**

18.1 **Prevention of Corruption**

18.1.1 The *Officer* needs to be aware of the Bribery Act 2010 which introduces general offences of offering or receiving bribes, a specific offence of bribing a foreign public official, and the new corporate offence of failing to prevent bribery; and the Council's Anti Fraud and Corruption Strategy.

18.1.2 The *Officer* must comply with the Council's *Code of Conduct* and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the *Officer* to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to in Rule 18.1.3 below.

18.1.3 The following clause must be put in every written Council contract:

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

SECTION 4: CONTRACT AND OTHER FORMALITIES

(a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done), or

(b) commit an offence under the Bribery Act 2010 or Section 117 of the Local Government Act 1972, or

(c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees. Any clause limiting the Contractor's liability shall not apply to this clause."

18.2 Anti Competitive Behaviour

18.2.1 In their guidance for public sector procurers, the Office of Fair Trading has highlighted practical steps to take to reduce the risks of anti competitive behaviour, which should be followed where practical:

- use non-collusion clauses, certificates of independent *Bids* and requests;
- ensure sufficient credible bidders;
- look for suspicious bidding patterns; and
- keep good notes of all discussions and potential bidders and systematically scrutinise them for suspicious patterns e.g. geographical prevalence of certain suppliers' areas.

18.2.2 If there is any doubt during a procurement exercise, or for further guidance, the *Officer* should contact the *Corporate Procurement Officer* or Internal Audit.

19. DECLARATION OF INTERESTS

19.1 If it comes to the knowledge of a member or an employee of the authority that a contract in which he or she has an *Interest* has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the *Monitoring Officer*.

19.2 *Officers* must comply with the *Officers' Code of Conduct*, as discussed at paragraph 18.1.2.

19.3 All Councillors must comply with the *Members' Code of Conduct* and register all contracts for goods, services or works made between the Council and:

- the councillor;
- a firm in which s/he is a partner;

SECTION 4: CONTRACT AND OTHER FORMALITIES

- a company in which s/he is a remunerated director;
- a member of the Councillor's family or a person with whom they have a close association, or a partnership or company employing or operated by such a person; and
- any person or body who has a place of business in the Teignbridge District Council area and in which the Councillor has a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 (or one hundredth of the total issued share capital) whichever ever the lower.

19.4 The *Monitoring Officer* shall maintain a record of all declarations of interests notified by members and *Officers*.

SECTION 5: CONTRACT MANAGEMENT

20. MANAGING CONTRACTS

- 20.1 **Business Leads / Business Managers must appoint contract managers for all new contracts** . All contracts must have a named Council contract manager for the entirety of the contract.
- 20.2 Contract managers must follow best practice in the area of supplier relationship and contract management.
- 20.3 **Extensions** should not be made unless this is provided for in the *Invitation to Tender* and the *Contract* itself. *Business Leads / Business Managers* must contact the *Council's Solicitor* and the *Corporate Procurement Officer* before any extension is actioned. Any **extensions** to contracts are to be in writing in the form approved by the *Council's Solicitor*, sequentially numbered and stored with the original *Contract*.
- 20.4 **Payments** to contractors will only be made on certification of the designated contract manager, in line with the *Financial Instructions*.
- 20.5 Ongoing checking of the financial position of the successful contractor throughout the period of the *Contract*. The level of any review will vary depending on the type of *Contract* and contractor involved, so the advice of the *Section.151 Officer* must be sought. The Contractor's insurance should also be checked annually through the life of the *Contract* and details passed to the Council's insurance officer for comment.
- 20.6 **Liquidated and ascertained damages** must be deducted for all periods of delay in line with the terms of the contract. Any instance, where in the opinion of the *Officer / Contract Manager*, this does not apply must be fully justified to, and authorised by, the responsible *Business Lead, the Council's Solicitor and the Section 151 Officer*.
- 20.7 The *Officer / Contract Manager* will consult with the responsible *Business Lead, the Council's Solicitor and the Section 151 Officer* promptly on becoming aware of any significant **dispute, claim for additional payment** in connection with a contract. No liability shall be accepted without the approval of the *Executive* in such cases.

21. MODIFICATION OF CONTRACTS DURING THEIR TERM

- 21.1 Contracts and Framework Agreements may be modified during their term without the need for a new procurement procedure in the following limited cases:

SECTION 5: CONTRACT MANAGEMENT

- where the change has already been provided for in the original procurement documents in clear, precise and unequivocal review clauses, provided that they state the scope and nature of the possible modifications or options and the conditions under which they may be used and they do not alter the overall nature of the *Contract* or *Framework Agreement*;
- for additional Works, Services or Goods by the original Supplier that have become necessary and were not included in the initial procurement, where a change of *Supplier* cannot be made for economic or technical reasons or would cause significant inconvenience or substantial duplication of costs;
- where the need for change follows circumstances that could not have been foreseen;
- where the modification does not alter the overall nature of the *Contract*
- where an increase in the price does not exceed 50% of the value of the original *Contract* or *Framework Agreement*;
- where a new *Supplier* replaces the one to which the Authority originally awarded the *Contract*; and
- where the change is not substantial.

Where a change is proposed to a *Contract* that exceeds the *EU Threshold* the *Officer* must contact the *Corporate Procurement Officer*.

22. **RISK ASSESSMENT AND CONTINGENCY PLANNING**

- 22.1 A business case must be prepared for all procurements with a potential value over the *EU Threshold*. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.
- 22.2 For all contracts with a value of over £50,000, contract managers must:
- maintain a risk register during the contract period in accordance with the Council's Risk Management Strategy;
 - undertake appropriate risk assessments and for identified risks (in consultation with the Council's Lead Officer for Risk Management and Risk Management Strategy as appropriate);
 - ensure mitigation and contingency measures are in place;
 - monitor the financial performance of the contractor or any parent; and company and alert the *Section 151 Officer* if there are any concerns.

23. **CONTRACT MONITORING, EVALUATION AND REVIEW**

- 23.1 All *Contracts* which have a value higher than the *EU Threshold* limits, or which are *High Risk*, are to be subject to formal review(s) by the contract manager with the contractor. The review may be conducted at a frequency that is determined by the risk value and profile of the *Contract*.

SECTION 5: CONTRACT MANAGEMENT

- 23.2 As a minimum, for all contracts with a value higher than the *EU Threshold* limits, or which are *High Risk*, an annual report must be submitted to the Council's Corporate Leadership Team detailing the financial and service performance.
- 23.3 A contract review process must be applied to all contracts deemed to be *High Risk, High Value, or High Profile*. This process must be applied at key stages of major procurements.
- 23.4 During the life of the contract, the *Officer* must monitor and take any necessary corrective action in respect of:
- performance;
 - compliance with specification and contract;
 - cost;
 - any *Value for Money* requirements; and
 - user satisfaction and risk management.
- 23.5 When the *Contract* is completed the Contract Manager must submit a report to the *Corporate Leadership Team*. The report must evaluate the extent to which the purchasing need and the contract objectives (as determined in accordance with Rule 5.1) were met by the contract. Where the contract is to be re-let, a provisional report should also be available early enough to inform the approach to re-letting of the subsequent contract.

Additional Requirements for Contracts Financed from the Capital Programme

- 23.6 Any *Officer* proposing a project for inclusion in the Capital Programme must complete a Project Initiation Document (PID), and have this signed as approved by their *Business Lead / Business Manager* and *Portfolio Holder*. The PID must then be submitted to the *Section 151 Officer*, who will refer the project to the Capital Review Board and the Executive for approval.
- 23.7 The Project Initiation Document will include the objectives of the project; a risk assessment and contingency plan; details of how the project will be controlled including appointment of a Project Manager; funding required and any revenue impact that the project may incur.
- 23.8 The *Section 151 Officer* will provide the Executive with a quarterly report on the overall progress of the Capital Programme including any variations. Monthly reports will also be provided to the Corporate Leadership Team.
- 23.9 **Overspends** – in monitoring expenditure on a project, the *Officer / Project Manager* shall notify the *Section 151 Officer*, Corporate Leadership Team

SECTION 5: CONTRACT MANAGEMENT

and Members at the earliest opportunity where the approved expenditure appearing in the capital programme is likely to be exceeded. Authorisations for additional spend should be requested in accordance with the *Financial Instructions* (Virement Rules).

SECTION 6: OTHER RELEVANT CONSIDERATIONS

24. STATE AID

Definition

- 24.1 State aid can be defined as any assistance offered by a public sector body in any form whatsoever that distorts or threatens to distort competition by favouring certain organisations and / or *Suppliers* or the production of certain goods. Such aid may take the form of a grant (capital injection), business tax relief, a reduction in rent or preferential finance (this is not an exhaustive list).
- 24.2 Where the Council wishes to administer aid in this manner careful consideration must be given prior to such a grant so as to ensure that it is compatible with EU law. Aid that is not compatible with EU law may be recovered from the beneficiary with interest.
- 24.3 For a grant to be considered as State Aid the following cumulative criteria must be met:
- the beneficiary receives a grant of a benefit or advantage; and
 - the aid is given by a Member State or through state resources; and
 - the beneficiary receives the aid on a selective basis; and
 - the aid granted distorts or threatens to distort competition; and
 - the aid is capable of affecting trade between Member States

Granted aid must fulfil all of these criteria in order to be deemed as a State Aid for the purposes of EU law.

- 24.4 Where a grant is defined as State Aid it must be notified in sufficient time to the European Commission. Aid will not be permitted to be bestowed upon the beneficiary until the Commission has reached a decision as to whether it can be deemed as compatible with EU law or not. Where Aid is incompatible the Council will not be permitted to grant it.

Exemptions for State Aid

- 24.5 Besides seeking approval from the European Commission, State Aid can be said to be compatible with EU law and can therefore be granted legally if:
- for the most part the total de minimis Aid given to a single recipient is less than €200,000 over a 3-year fiscal period;
 - aid in favour of Small, Medium Enterprises, research, innovation, regional development, training, employment of disabled and disadvantaged workers, risk capital and environmental protection; and
 - aid measures promoting female entrepreneurship, such as aid for young innovative businesses, aid for newly created small businesses

SECTION 6: OTHER RELEVANT CONSIDERATIONS

in assisted regions, and measures tackling problems like difficulties in access to finance faced by female entrepreneurs.

- 24.6 Such Aid must still be notified to the European Commission and as a result Council *Officers* are advised to seek the advice and guidance of the *Council's Solicitor* and / or *Monitoring Officer* and *Corporate Procurement Officer* where State Aid may be said to exist on a particular project or procurement.

25. DEVELOPMENT AGREEMENTS

Definition

- 25.1 A development agreement can be defined as an arrangement between a public sector body and a third party about the use or development of land or property, the nature of which invariably involves the transfer of land that would be otherwise be considered commercially undesirable, which becomes commercially desirable as a result of incentivisation by the public sector body.
- 25.2 Where the Council wishes to establish a development agreement that meets the definition above, again careful consideration must be given prior to such an agreement being established so as to ensure that it is compatible with EU law. A development agreement that is not compatible with EU law may be said to be a public works or *Concession Contract* and may therefore be subject to the legislation on public procurement.
- 25.3 For a development agreement to be considered as not triggering the public procurement legislation some or all the following characteristics must be met:
- the proposed development (or a significant part) is to be undertaken at the initiative and autonomous intention of the developer. (This may be particularly likely if the developer already owns or has control of land to be developed);
 - the development agreement is ancillary or incidental to a transfer or lease of land or property from the Council to the developer, and is intended to protect the interests of the Council which is the lessor or otherwise retains an interest in the land or property;
 - the development agreement is based on proposals put forward by the developer, rather than requirements specified by the Council, albeit that these proposals may be sought, and the "winner" chosen by the Council;
 - there is no pecuniary interest passing from the Council to the developer as consideration for undertaking the development, either through direct payment or indirectly, for example by the assumption of

SECTION 6: OTHER RELEVANT CONSIDERATIONS

obligations such as contributions towards project finance or guarantees against possible losses by the developer;

- the development agreement does not include specific contractually enforceable obligations on the developer to realise a work or works (even if that work or works is recognised as being the general intent of the parties to the agreement); and
- the development does not consist of or contain works for the direct economic benefit of the Council. The involvement of the Council consists only in the exercise of statutory land-use planning powers.

25.4 Where a development agreement cannot be said to meet the criteria defined above a public works or *Concession Contract* must be awarded in accordance with the public procurement legislation.

DEFINITIONS APPENDIX

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| 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 Rule 7.2. |
| Award Criteria | The criteria by which the <i>Contract</i> is to be awarded to the successful Tenderer (see further Rules 10 and 11.2e). |
| Award Procedure | The procedure for awarding a contract as specified in Rules 8, 10 and 15. |
| 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 <i>Value for Money</i> . |
| Bid | A <i>Supplier's</i> proposal submitted in response to the <i>Procurement Documentation</i> . |
| 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% of the contract value). A bond is intended to protect the Council against a level of cost arising from the contractor's failure. |
| Business Lead | The officers defined as such in the <i>Constitution</i> as members of the Corporate Leadership Team. |
| Business Manager | The <i>Officer</i> designated by the <i>Business Lead</i> to exercise the role reserved to the <i>Business Lead</i> by these Contract Procedure Rules. |
| Candidate | Any person who asks or is invited to submit a <i>Quotation</i> or <i>Tender</i> . |
| Code of Conduct | The code regulating conduct of Officers, available on the Council's Intranet. |
| Concession Contracts | Shall mean a public contract under which <i>Supplier/s</i> are given the (exclusive) right to exploit the works or services provided for their own gain and where the <i>Supplier's</i> income is generated solely from third parties or as a combination of revenue streams from both third parties and the Council. |
| Constitution | The constitutional document approved by the Council which: <ul style="list-style-type: none"> • allocates powers and responsibility within the Council and between it and others; • delegates authority to act to the Executive, Other Member Bodies and Officers; regulates the behaviour of individuals and groups through rules of procedure, codes and protocols. |
| Consultant / Consultancy | 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. |

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| Contract | Is 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 a contracting authority engages a person or organisation to provide goods, works or services. |
| Contracting Decision | Any of the following decisions: <ul style="list-style-type: none"> • withdrawal of <i>Invitation to Tender</i>; • whom to invite to submit a <i>Quotation or Tender</i>; • <i>short listing</i>; • award of <i>Contract</i>; • any decision to terminate a <i>Contract</i>; • any decision to extend or vary a <i>Contract</i>. |
| Contracts Finder | A web-based portal provided for the purpose of under- <i>EU Threshold Contracts</i> on behalf of the Cabinet Office |
| Contract Notice | An advertisement placed in the Official Journal of the European Union, which is a legal requirement for all procurements that exceed the <i>EU Threshold</i> . |
| Corporate Contract | A <i>contract</i> let by the <i>Corporate Procurement Officer</i> to support the Council's aim of achieving <i>Value for Money</i> to include <i>Contracts</i> let by the Council and / or <i>Contracts</i> or <i>Framework Agreements</i> let by other organisations to which the Council has access. |
| Corporate Procurement Officer | The Council's central procurement officer charged with providing strategic direction and advice to secure <i>Value for Money</i> in the Council's procurement activities. |
| Council's Solicitor | As identified in the <i>Constitution</i> . |
| Dynamic Purchasing System | A completely electronic system of limited duration which is: <ol style="list-style-type: none"> established by a contracting authority to purchase commonly used goods, work, works or services; and open throughout its duration for the admission of economic operators which satisfy the selection criteria specified by the contracting authority; and submit an indicative <i>Tender</i> to the contracting authority or person operating the system on its behalf which complies with the specification required by that contracting authority or person. |
| Electronic Auction | Is a means of seeking the <i>Supplier's</i> pricing in an electronic format in a live competitive environment, the aim of which is to achieve greater <i>Value for Money</i> than traditional tendering. |
| Executive | The Council's Executive as defined in the <i>Constitution</i> . |
| EU Procedure | The procedure required by the EU where the <i>Total Value</i> exceeds the <i>EU Threshold</i> . |
| EU Threshold | The contract value at which the EU public procurement directives apply. |

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| European Economic Area | The 15 members of the European Union, and Norway, Iceland and Liechtenstein. |
| Financial Instructions | The <i>Financial Instructions</i> outlining <i>Officer</i> responsibilities for financial matters issued by the <i>Section 151 Officer</i> in accordance with the <i>Constitution</i> (Financial Procedure Rules). |
| 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 <i>contracts</i> 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 <i>European Economic Area</i> are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore. |
| High Profile | A high-profile purchase is one that could have an impact on functions integral to Council service delivery should it fail or go wrong. |
| High Risk | A high-risk purchase is one which presents the potential for substantial exposure on the Council's part should it fail or go wrong. |
| High Value | A high-value purchase is where the value exceeds the <i>EU Threshold</i> values. |
| Interests | Is a connection to another person or organisation that meets any of the following criteria: (a) Ownership of shares in a Supplier or any other financial interest in a Supplier whether held by the relevant individual or by a close relative of the individual or by any corporate entity in which the individual has an interest; and / or (b) Employment by a Supplier of the individual or a close relative of the individual; and/or (c) Provision of services to a Supplier by the individual or by the firm the individual is associated with, and / or (d) Connection with, whether prejudicial or otherwise, any person/s said to be affected by the outcome of a procurement process. |
| Invitation to Tender (ITT) | <i>Invitation to tender</i> documents in the form required by these Contract Procedure Rules. |
| Key Decision | Decisions that are defined as key decisions in the <i>Constitution</i> . |
| Lots | One of a number of categories of goods, works or services which a single procurement process has been divided into with a view to awarding to multiple suppliers |
| Nominated Suppliers and Sub-Contractors | Those persons specified in a main <i>contract</i> for the discharge of any part of that <i>contract</i> . |

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| <p>Non-commercial Considerations</p> <p>Non-commercial Considerations (continued)</p> | <p>(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');</p> <p>(b) Whether the terms on which contractors contract with their sub-contractors constitute, in the case of <i>contracts</i> with individuals, <i>contracts</i> for the provision by them as self-employed persons of their services only;</p> <p>(c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy;</p> <p>(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');</p> <p>(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;</p> <p>(f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees;</p> <p>(g) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support;</p> <p>(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), 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 1981 (<i>TUPE</i>) may apply.</p> |
| <p>Officer</p> | <p>The officer designated by the <i>Business Lead / Business Manager</i> / to deal with the <i>contract</i> in question.</p> |
| <p>Parent Company Guarantee</p> | <p>A <i>contract</i> which binds the parent of a subsidiary company as follows: if the subsidiary company fails to do what it has promised under a <i>contract</i> with the Council, the Council can require the parent company to do so instead.</p> |
| <p>Portfolio Holder</p> | <p>A member of the <i>Executive</i> to whom political responsibility is allocated in respect of specified functions.</p> |
| <p>Pre-Qualification Questionnaire (PQQ)</p> | <p>The <i>PQQ</i> is a questionnaire issued to ascertain the suitability of potential suppliers to provide goods, services or works as identified in the tender advertisement / <i>contract</i> notice.</p> |
| <p>Prior Information Notice (PIN)</p> | <p>An advertisement placed in the Official Journal of the European Union, which indicates to the open market the Authority's intentions</p> |

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| | in advance of a formal procurement or number of procurements taking place |
| Procurement Documentation | Shall mean the documents dispatched to <i>Suppliers</i> as part of the procurement process; comprised of the instructions and information to applicants, <i>contract</i> information, specification, pricing schedule and certificates for signature. |
| Procurement Strategy | The document setting out the Council's approach to procurement and key priorities for a specified period of time. |
| Purchasing Guidance | The suite of guidance documents, together with a number of standard documents and forms, which supports the implementation of these Contract Procedure Rules. The guidance is available on the Council's intranet and Procurement Tool. |
| Quotation | A quotation of price and any other relevant matter (without the formal issue of an <i>Invitation to Tender</i>). |
| Relevant Contract | <i>Contracts</i> to which these Contract Procedure Rules apply (see Rule 4). |
| Section 151 Officer | The Chief Finance Officer or such other officer as may be designated Section 151 Officer by the Council, including the appointed Deputy Section 151 Officer. |
| Selection Criteria | The Authority's minimum requirements by which the Tenderer is to be assessed as being suitable to proceed with the <i>Tender</i> process. |
| Shortlisting | The process of selecting <i>Suppliers</i> who are to be invited to quote or bid or to proceed to final evaluation. |
| Standstill | Shall mean the period between notification of the intention to award a <i>Contract</i> in accordance with the <i>EU Procedure</i> and the formal award of said <i>Contract</i> . |
| Sub-Contractors | Those persons specified in a main <i>Contract</i> for the discharge of any part of that <i>Contract</i> . |
| Supplier | Any person who asks or is invited to submit a <i>Quotation</i> or <i>Tender</i> . |
| Tender | A <i>Supplier's</i> proposal submitted in response to an <i>Invitation to Tender</i> . |
| Tender Register | The log kept by the Monitoring Officer to record details of <i>Tenders</i> (see Rule 13.5). |
| Total Value | The whole of the value or estimated value (in money or equivalent value) for a single purchase or <i>Contract</i> , calculated as follows: (a) where the <i>contract</i> is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period, including any permitted extensions; (b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months; |

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| Total Value (continued) | <p>(c) where the <i>contract</i> is for an uncertain duration, by multiplying the monthly payment by 48;</p> <p>(d) Where a single requirement for goods or services or for the carrying out of a work or works and a number of <i>contracts</i> have been entered into or are to be entered into to fulfill that requirement;</p> <p>(e) Where the <i>Contract</i> is to be executed over a period for goods or services and</p> <ul style="list-style-type: none"> • a series of <i>contracts</i>; or • a <i>Contract</i> which under its terms is renewable <p>is entered into;</p> <p>(f) Where there are a number of requirements over a given period for <i>contracts</i> that have similar requirements or are for the same type of goods and service;</p> <p>(g) for feasibility studies, the value of the scheme or <i>contracts</i> which may be awarded as a result;</p> <p>(h) for <i>Nominated Suppliers and Sub-contractors</i>, the total value shall be the value of that part of the main <i>contract</i> to be fulfilled by the <i>Nominated Supplier or Sub-contractor</i>;</p> <p>(i) The <i>Total Value</i> of all <i>contracts</i> expected to be placed under a <i>Framework Agreement</i>;</p> <p>(j) The <i>Total Value</i> of all <i>contracts</i> expected to be placed under a <i>Dynamic Purchasing System</i>;</p> <p>(k) The <i>Total Value</i> of the requirement where more than one (1) organisation will purchase under the same <i>Contract</i>;</p> |
| TUPE Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No.246) | <p>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.</p> |
| Value for Money | <p>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.</p> |