



PROCUREMENT REGULATIONS

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INDEX

- 1. Introduction**
- 2. Hierarchy of Regulations**
 - Rule 1**
 - 3. Procurement Objectives**
 - 4. Roles and Responsibilities of Directors**
 - 5. Roles and Responsibilities of Heads of Service**
 - 6. Thresholds and Procurement Regulations for Contract Letting**
 - Thresholds for Goods and Service**
 - Thresholds for Works**
 - Goods and Services (more details)**
 - Works (more details)**
 - Rule 2**
- 7. Tender and Quotation Exercises**
- 8. Authority to Incur Expenditure**
- 9. Tender Documentation**
- 10. Late Tenders**
- 11. Electronic e-auctions**
- 12. Contract Award, Documentation and Retention of Tenders**
- 13. Directors Actions**
 - Rule 3**
- 14. Extensions & Variations**



Rule 4

15.Consortia and Corporate Contracts

16.Clarification and Post Tender Negotiations

17.Here to Help

PROCUREMENT REGULATIONS

1. Introduction

- 1.1 The purpose of these Regulations is to lay down a set of guidelines which provide a framework for officers procuring goods, works and services on behalf of the Council. For ease of use, the specific Regulations are set out in shaded boxes throughout the document. The Regulations are supplemented by a more detailed Procurement Toolkit issued by Procurement, which gives guidance on the techniques to achieve best value for money, *The Public Contracts Regulations 2015*, (link to be added) up to date *European Directives*, (link to be added) *working with SME's* (link to be added), and a series of templates to be used in the contracting process.
- 1.2 Officers are warned that appropriate disciplinary action may be taken in accordance with the Council's Disciplinary Policy if they fail to comply with these Procurement Regulations. Employees have a duty to report breaches of the Regulations to the Head of Governance and Risk Management.
- 1.3 The Regulations apply to all expenditure by the Council on goods, works and services, provided by external organisations. The Regulations include mandatory requirements, which are normally identified by the word "must" in bold letters. These requirements **must** always be followed. The words "**should**" and "**should not**" relate to good practice advice. Whilst not mandatory, you **must** have a good reason for not following the good practice advice and this **must** be recorded on your tender file. If in doubt, you **must** contact Procurement for advice.
- 1.4 All officers who commission contracts for goods, works or services are required to follow the Regulations. This requirement also covers all persons, such as external consultants, who commission contracts on behalf of the Council. Officers **must** ensure that consultants are given copies of the Regulations and that they comply.

- 1.5 The Procurement Officer will be responsible for updating the Procurement Regulations in conjunction with Contracts Procurement Group (CPG). The Procurement Regulations will be published on the Council's website.
- 1.6 The new European Directives have enabled the UK the option to not fully apply the Directives in some circumstances but they still define the way other procurement processes **must** take place. The Council Regulations refer to the Public Contract Regulations 2015 (PCR's) European Legislation as well as Council policy.
- 1.7 Where there is conflict between PCR's, European Legislation, and Council policy, the requirements of the **PCR's takes precedence**. e.g. there is nothing in the EU Directives that mentions the use of advertising on the Central Government Contracts Finder portal, but the PCR's do.
It is important to note that the Regulations **must not** be waived if doing so would contravene either the PCR's or EU legislation.

2.0 Hierarchy of Regulations

- 2.1 These Regulations attempt to summarise all of the Council's Procurement Regulations. Further information and guidance is provided within the Procurement Toolkit which is an extension of this document. Some of the Regulations are derived from provisions contained in the Council's Constitution and Financial Regulations (links to be added). Every effort has been made to ensure a consistency between the documents, but in the event of any conflict, the Constitution takes precedence. The Procurement Regulations can be amended by the Director of Finance and Support Services.

3.0 Procurement Objectives

- 3.1 The purpose of procurement activity shall be to achieve best value for the community in accordance with the Council's statutory or approved objectives and the Procurement Strategy. This should include an innovative approach to contractual relationships with the private and not-for-profit sectors within a

robust contractual framework. Officers with responsibility for procurement shall ensure that they are able to demonstrate achievement of best value by having regard to a combination of economy, efficiency and effectiveness and having considered the most appropriate method of contracting

- 3.2 Every contract or official order for goods, works or services made by the Council shall be for the purpose of achieving the Council's statutory or approved requirements and shall conform to all relevant domestic and European Union legislation.

4.0 Roles and Responsibilities of Directors

- 4.1 Directors **must** ensure that mechanisms are in place, where staff are delegated to carry out procurement activities, for appropriate induction, information and training. They are accountable to the Executive for the performance of their staff's duties in relation to contract letting and management. The Procurement Team will provide support for this

5.0 Roles and Responsibilities of Heads of Service

- 5.1 Heads of Service have responsibility for all contracts tendered, let and managed by their service. They are accountable to CMT for the performance of their duties in relation to contract letting and management, which are:
- a) to ensure compliance with PCR's, EU legislation and Council Policy;
 - b) to ensure value for money in their teams;
 - c) to ensure compliance with these Procurement Regulations
 - d) to ensure that all relevant staff are familiar with the provisions of these Regulations and that they receive adequate training on their operation;
 - f) to ensure compliance with any guidelines issued in respect of these Procurement Regulations;
 - g) to take immediate action in the event of a breach of Procurement Regulations within their department;

- h) to provide the Procurement Team with the information on all Contracts let above £5,000 to enable them to keep a register of all contracts and tenders (link to be added).;
- i) to keep records of waivers of any provision of these Procurement Regulations;
- j) to ensure appropriate contract monitoring takes place of all contracts.

5.2 Heads of Service **must** comply with these Regulations and have a responsibility to ensure that their staff and any consultants or agency staff also comply with them. Heads of Service **must** put mechanisms in place to ensure that staff who carry out procurement receive appropriate induction, information and training. The Procurement Team will provide support for this.

Rule 1

Directors are accountable to the Executive for the performance of their staff's duties in relation to contract letting and management

Heads of Service have responsibility for all contracts let by their service. Authority to make decisions under the Procurement Regulations may be delegated. Those who have delegated authority to take decisions in the name of the Director will be set out in the Scheme of Delegation for the relevant service.

6.0 Thresholds and Procurement Regulations for Contract Letting

It is forbidden to fragment a project which falsely gives the impression of lower value contract(s). the value of a contract is total expected cost based on current prices for the whole contract term. If the proposed term is longer

than four years the value can be assessed by calculating a typical month multiplied by 48.

- 6.1 The following thresholds shall apply to all contract award processes.
- 6.2 To clarify the table below, the following points should be noted:
 - a) Total Value, exclusive of VAT refers to the full remuneration to be paid to the supplier or contractor over the life of the contract;
 - b) Where there are a number of linked contracts – e.g. those using the same suppliers, or for similar goods, works or services– the option for joining them up **must** be explored;
 - c) The Minimum Award Procedure describes the minimum competitive process which must be followed; an officer or Director may choose to instigate a more stringent process;
 - d) Shortlisting (link to be added) is the process by which applicants are selected for quotation or tender, and shows who is responsible for this activity;
 - e) The Contract Award Decision shows the person who must approve the proposed contract award decision, before the decision is finalised and communicated to the proposed supplier or contractor; this must be someone who is authorised under the Council’s Scheme of Delegation to take these decisions.
- 6.3 Light Touch (Replaces Part B Services but the nature of the work should not affect the Council. Contact Procurement for advice)

The standard European principles of mutual recognition, proportionality, non- discrimination and transparency apply even below the EU Thresholds.

There are no exemptions, although where there is no cross border dimension a ‘light touch’ process is permissible. If the expected spend is over the new EU Threshold of E750,000

(£625,050 – 2015) then a European Contract Notice should be used.

Examples in the directive are:-

Catering Services	National Law Legal Support
Prison Service	Fire and Rescue Service
Community Service	Education
Health Service	

6.4 Reserved Contracts

The procurement process could be targeted to suppliers that employ at least 30% disadvantaged employees. A contract term can be up to three years provided the Council has not awarded to the successful bidder in the last three years.

THRESHOLDS FOR GOODS AND SERVICES

Total Value	Minimum Award Procedure	Specific Information for each threshold	Contract Award Decision	What documentation is to be kept	What type of documentation is to be used?
Up to £500	Official Purchase Orders	Purchase Orders must be used (link to be added)			
Between £500 - £10,000	One written quotation	Two if the requirement is a common product/service where two quotes which provide value for money are evidenced	Approved officer	Retain record of quotation figure	Purchase Order to provide Terms and Conditions
Between £10,000 - £75,000	Minimum of two written quotations		Approved Officer	Retain record of quotation figure	Use of standard Request for Quotation Document available from Procurement

£75,000 - £100,000	Minimum of Three written quotations		Approved officer	Written record of any reasons for not obtaining three quotations, or not accepting the lowest quotation, or award criteria other than price	Use of standard Request for Quotation Document available from Procurement
£100,000 – EU Threshold (Procurement will advise up to date thresholds)	Full tender process following the principles of EU tender process		Approved officer		Use of standard Tender Documentation available from Procurement with assistance from Procurement
Over EU threshold	EU Procedure must be followed.		Director	<ul style="list-style-type: none"> • Evaluations of PQQs and tenders • Notes of post-tender discussions and clarifications • Executive / Director reports as appropriate 	Assistance from procurement with preparation of documentation, specification writing, moderation meeting, contract award, Use of standard ITT Document available from Procurement
WORKS					
Up to £5,000	Purchase Order	This category should allow for any emergency or reactive works	Approved Officer		
£5,000 - £20,000	One Quote		Approved Officer	Retain record of quotation figure	Purchase Order to provide terms and conditions
£20,000 - £50,000	Minimum of Two written quotations			Written record of any reasons for not obtaining three quotations, or not accepting the lowest quotation, or award criteria other than price	Standard terms and conditions may be acceptable – seek Legal Services advice with respect to the potential need for a contract
£50,000 - £250,000	Minimum of Three written				Use of Standard Request for

	quotations				quotation and conditions of contract to be used for process, Available from Procurement
£250,000 – EU Thresholds	Minimum of three competitive tenders shall be invited and a formal written contract prepared in advance. Either a pre-qualification is followed using ConstructionLine or similar OR an advert must be placed on the EHDC website and Contracts Finder				Formal JCT contract to be used.
Above EU thresholds	Formal EU process must be followed		Director		As per process for Goods and Services

In the event of an emergency and an urgent order is required, a manual order number will be provided by the Procurement Team, it will be at their discretion, from the information provided by the officer, if they feel that the requirement is urgent. For example, a stationery order would not be classed as urgent. Officers must ensure that they raise a retrospective order, (an order raised after the receipt of the goods/services) using the manual order in the text as reference.

Where there is an existing corporate contract (link to be added) in place, these must be explored in the first instance. E.g. Stationery. Contact Procurement if you are unsure.

Goods and Services

6.5 For purchases below £500, Purchase Orders must be created via the Councils' Purchasing system. No orders are to be placed with suppliers via any other method. Best Value must still be sought for the Council.

- 6.6 For contracts between £500 and £10,000, initially these may be made orally, with written confirmation obtained prior to placing the order. Written confirmation may be by email or letter, but must identify the supplier, and **must** be retained for at least 12 months from the date of the contract. A purchase order **must** be raised after receipt of quote. Officers must not place the order with the supplier over the phone or by email or letter. Value for money must be sought and it is down to the discretion of the officer procuring for their service enabling them to use their knowledge and skills to when deciding whether to go for two quotes rather than one.
- 6.7 For contracts between £10,000 and £75,000 a minimum of two competitive quotations to be invited. Quotations **must** be invited using the Council's standard Request for Quotation and terms & conditions of contract, and **must** be confirmed in writing prior to placing the order. All quotations must be retained for at least 12 months from the date of the contract. If only one quotation is received a further supplier must be contacted to ensure a fair and transparent process and evidence that value for money is being sought.
- 6.8 For contracts between £75,000 and £100,000 at least three competitive quotations to be invited, and at least two quotations to be received. Quotations **must** be invited using the Council's standard Request for Quotation and terms & conditions of contract, and **must** be confirmed in writing prior to placing the order. All quotations must be retained for at least 12 months from the date of the contract.
- 6.9 Quotations between £50,000 and £100,000 **must** be advertised on the Council's web site, giving a reasonable period of time for interested parties to respond, which **should** normally be at least three weeks from the date on which the advertisement is published. If using a selection process, the advertisement **must** state the information required from applicants, and suppliers should be selected to submit quotations on the basis of fair and transparent criteria, which **must** be decided in advance. At least four quotations **should** be invited using the Council's terms and conditions of contract, an appropriate specification

and any other appropriate documents, and at least three quotations **should** normally be received. Quotations **should** be submitted by suppliers using the Council's documentation, and **must** be retained for at least 12 months from the date of contract. The contract **must** be awarded on the basis of best value for money, based on fair and transparent assessment criteria which **must** be decided in advance. If requested by any applicant or supplier submitting a quotation, details of the selection or award criteria **must** be disclosed.

WORKS

In the event that an emergency and an urgent order is required, a manual order number will be provided by the Procurement Team, it will be at their discretion, from the information provided by the officer, if they feel that the requirement is urgent. Alternatively a corporate credit card can be used where there is the risk to life and limb and there is a high Health and Safety risk. Where a manual order is provided, officers must ensure that they raise a retrospective order, (an order raised after the receipt of the goods/services) using the manual order in the text as reference.

Where there is an existing corporate contract (link to be added) in place, these must be explored in the first instance e.g. small works. Contact Procurement if you are unsure.

- 6.10 Works quotations, suppliers **must** be selected from a standing list of accredited suppliers or contractors (link to be added), such as Exor, Constructionline, or such other database as may be approved by the Procurement Team and H&S. In the event that there are no suitable suppliers or contractors on the standing list of accredited suppliers or contractors, the process for quotations **must** be followed in line with the agreement of the Procurement Officer. In both circumstances to enable the Council to follow the Social Value Act and the Localism Act, where possible at least two local suppliers (link to definition of local suppliers) should be invited to bid.

- 6.11 For contracts under £5,000, official Purchase Orders **must** be raised. Purchase Orders must be created via the Council's Purchasing system. No orders are to be placed with suppliers via any other method. Best Value must still be sought for the Council.
- 6.12 Contracts between £5,000 and £20,000 may be initially made orally, with written confirmation obtained prior to placing the order. Written confirmation may be by email or letter, but must identify the supplier, and **must** be retained for at least 12 months from the date of the contract. A purchase order **must** be raised after receipt of quote. Officers must not place the order with the supplier over the phone or by email or letter.
- 6.13 For contracts between £20,000 and £50,000 a minimum of two competitive quotations to be invited. Quotations **must** be invited using the Council's standard Request for Quotation and terms & conditions of contract, and **must** be confirmed in writing prior to placing the order. Legal advice must be sought in respect of the potential need for a full Joint Contracts Tribunal (JCT)/ New Engineering Contract (NEC) (links to be added) or other contract. All quotations must be retained indefinitely. If only one quotation is received a further supplier must be contacted to ensure a fair and transparent process and evidence that value for money is being sought.
- 6.14 For contracts between £50,000 and £250,000 at least three competitive quotations to be invited, and at least two quotations received. Quotations **must** be invited using the Council's standard Request for Quotation and terms & conditions of contract, and **must** be confirmed in writing prior to placing the order. All quotations must be retained indefinitely.
- 6.15 Contracts between £250,000 and EU thresholds **must** be advertised on the Council's web site, giving a reasonable period of time for interested parties to respond, which **should** normally be at least three weeks from the date on which the advertisement is published. If using a selection process, the advertisement **must** state the information required from applicants, and suppliers should be selected to submit

quotations on the basis of fair and transparent criteria, which **must** be decided in advance. At least four quotations **should** be invited using the appropriate JCT contract documents, an appropriate specification and any other appropriate documents, and at least three quotations **should** normally be received. Quotations **should** be submitted by suppliers using the Council's documentation, and **must** be retained indefinitely. The contract **must** be awarded on the basis of best value for money, based on fair and transparent assessment criteria which **must** be decided in advance. If requested by any applicant or supplier submitting a quotation, details of the selection or award criteria **must** be disclosed.

7. Tender and Quotation Exercises

- 7.1 When selecting bidders other than by advertisement, and to enable the Council to follow the Social Value Act and the Localism Act, where possible invite at least two local suppliers to bid.
- 7.2 For tender processes under the EU Thresholds the principles of EU Regulations should be followed but you **must** build into your timetable enough time to allow bidders to be able to prepare their responses and allow for any approvals,
- 7.3 All contracts below the EU threshold **must** follow these Regulations unless, either:
 - (a) a waiver (link to be added) is obtained either from the relevant Director; or
 - (b) an existing term contract, framework or appropriate arrangement let in competition by the Council, which complies with these Regulations, is being used; or
 - (c) the contract is to be funded in full by another public or voluntary organisation that has requested in writing that its own Regulations are followed, subject to compliance with European legislation; or
 - (d) the goods, works or services are required urgently to protect life or property, where there is no existing compliant contractual arrangement in place;

7.4 Any contracts over the EU tendering thresholds **must** comply with the requirements of the Public Contracts Regulations 2015, which apply to all contracts with values above the EU thresholds set out above, unless exempt. If it is thought that a contract may be exempt from the requirements of the Public Contracts Regulations, advice and confirmation **must** be obtained from Procurement. Where the regulations apply, no officers or members are permitted to waive the requirements of the Regulations. The only exceptions to this will be when:

- (a) an existing, recognised consortium contract or framework, which has gone through an appropriate competitive tendering process in accordance with the EU Regulations, is being used. Examples include Supply Herts, ESPO, CCS, or other. There is an automatic sign off to use existing, recognised consortiums by the Director of Finance and Support Services on recommendation by the Procurement Officer
or
- (b) an existing term contract, framework or appropriate arrangement let in competition by the Council, which complies with the EU Regulations, is being used.

7.5 Preparation for the Tendering exercise includes:

- (a) identification and definition of needs;
- (b) Demand Management
- (c) options appraisal and business case development;
- (d) a review of market conditions;
- (e) Decision on which procurement process to follow
- (f) Social Value Act 2013 (link to be added)
- (g) assessment of the scope for collaboration, internally with other service, or externally with other organisations or the voluntary sector;
- (h) review of the implications for HR issues, sustainability, equalities and diversity local businesses, and other policies(link to be added)
- (i) an analysis of the potential for achieving financial savings;
and

- (j) project planning, including definition of roles and responsibilities throughout the process.

7.6 Preparation for the Quotation exercise (link to be added) includes:

- (a) identification and definition of needs
- (b) Demand Management
- (c) Social Value Act 2013
- (d) assessment of the scope for collaboration, internally with other services, or externally with other organisations or the voluntary sector
- (e) an analysis of the potential for achieving financial savings.

7.7 All tenders **must** be publicly advertised, through the Council's web site (link to be added) and/or other appropriate media, including the Official Journal of the European Union (OJEU). Procurement will maintain advertisements on the web site. The e-sourcing tool automatically advertises in OJEU, Supply Herts and Contracts Finder, and you **should** make arrangements for any other advertisements to be placed as appropriate.

7.8 For contracts over the relevant thresholds, an annual Prior Information Notice **should** normally be inserted in the OJEU as early as possible in the financial year. Procurement will advise on the up-to-date thresholds.

7.9 If a tender is subject to an OJEU notice, you **must not** allow any other advertisements to appear before the OJEU notice.

7.10 There are several methods of tendering and you **must** ensure you follow the correct process (link to be added) for the total amount of the spend. And you **must** ensure that you have carried out this process in a way which encourages competition. Advice **must** be obtained from Procurement before proceeding.

7.11 The Council's standard documentation **must** be used for potential suppliers to apply for Quotations and Tenders.

7.12 Where the contract is covered by EU Legislation, you **must** follow the Rules for short listing set out in the Regulations. For

non-EU contracts a minimum of four tenders **must** be invited unless fewer than this have expressed an interest or are deemed suitable.

7.13 Directors **must** ensure that all contracts to be tendered are entered onto the forward plan of contracts, administered by Procurement at the earliest opportunity.

7.14 Procurement **must** be involved at part (a) of 7.5(a) and 7.6(a) above of the planning stages to ensure that they have an understanding of the project to enable correct advice to be given when requested throughout the process.

Rule 2

CMT must approve the procurement strategy proposals for all contracts.

GOODS AND SERVICES

Where the Contract is subject to the tendering Regulations of the EU Procurement regime, then those Regulations shall apply to the letting of the Contract.

Contracts over £100,000 and under the tendering thresholds of the EU Procurement regime must be awarded following the principles of the EU procurement process via competitive written tenders, through a fair and transparent process, which must be advertised on the Council's web site. At least four written competitive tenders must be invited, with at least three received.

Contracts over £75,000 and under £100,000 must be awarded following invitation of a minimum of three competitive quotations, based on the Council's terms and conditions of contract.

Contracts over £10,000 and under £75,000 must be awarded following invitation of a minimum of two, with a receipt of at least two competitive quotations, based on the Council's terms and conditions of contract.

Contracts over £500 and under £10,000 must be awarded following receipt of at least one quotation, which must be submitted in writing, and award of the contract is always subject to the duty for obtaining best value.

WORKS

CMT must approve the procurement strategy proposals for all contracts

Where the Contract is subject to the tendering Regulations of the EU Procurement regime, then those Regulations shall apply to the letting of the Contract.

Contracts over £250,000 and under the tendering thresholds of the EU Procurement regime must be awarded following the principles of the EU procurement process via competitive written tenders using the appropriate JCT Contract documentation, through a fair and transparent process, which must be advertised on the Council's web site. At least four written competitive tenders must be invited, with at least three received.

Contracts over £50,000 and under £250,000 must be awarded following invitation of a minimum of three competitive quotations, based on the Council's Request for Quotation documentations and conditions of contract.

Contracts over £20,000 and under £50,000 must be awarded following invitation of a minimum of two, with a receipt of at least two competitive quotations, based on the Council's terms and conditions of contract. Legal team to provide advice in respect to potential need for a JCT/NEC or other contract to be put in place.

Contracts over £5,000 and under £20,000 must be awarded following receipt of at least one quotation, which must be submitted in writing, and award of the contract is always subject to the duty for obtaining best value. A Purchase order must be sent to include the standard terms and conditions.

Under £5,000 Purchase Cards or Purchase Order for emergency requirements.

8. Authority to incur expenditure (link to be added)

8.1 For revenue budgets, provided that Procurement Regulations have been complied with and subject to any specific exclusions,

the inclusion of any item in the approved revenue budget other than a contingency provision will constitute authority to incur expenditure.

- 8.2 For capital budgets, authority to incur expenditure will follow various stages, from initial feasibility through to project implementation, which will ensure that all projects are considered in detail, including both capital and revenue implications. Funding for each project will be specifically agreed by the Executive/Council in accordance with agreed procedures and only when the Council, through its budget approval process, agrees the allocation of funds will the project be included in the current funded capital programme. Further information can be found in the Council's Constitution (link to be added).
- 8.3 Nothing in these Regulations precludes the requirement within the Constitution for the authority to incur expenditure.
- 8.4 All contracts **must** be awarded on the basis of the best value for money, which will normally be the Most Economically Advantageous Tender (MEAT) or Quote, taking into account both cost and quality considerations (links to be added). This will be the optimum combination of costs and benefits assessed against pre-determined evaluation award criteria, which will be detailed in the Tender/Quotation documentation.
- 8.5 Value for money will normally be an assessment of cost and quality criteria. You **must** define the criteria for award of contract prior to inviting Tenders/Quotations for all contracts over £50,000. Further guidance on setting and evaluating award criteria can be obtained from Procurement.

9.0 Tender Documentation

The e-tendering system (link to be added) **must** be used for all procurement over £10,000.

You **must** have all the documents required to present a tender prepared before publishing the Contract Notice.

Variants can be allowed or specified provided it is set out in the Notice and the details, including the evaluation criteria is included in the tender documents.

Lots are encouraged to give more chance for SME's. There can be any number of Lots and any size. A limit of the number of Lots that can be bid for can be imposed. The award criteria for each Lot must be available to the bidders.

You **must** keep a record of why lots were not used as this will be needed for a final report.

- 9.1 In inviting Tenders from suppliers, the Tender packs which are issued to suppliers **must** as a minimum include the following:
 - (a) a letter inviting suppliers to submit Tenders;
 - (b) Instructions to Tenderers, laying down the Regulations and procedures to be followed when preparing and submitting Tenders;
 - (c) Tender Form, on which Tenderers will make their formal offer, and commit to certain key requirements, such as non-collusion;
 - (d) Terms of Contract appropriate to the contract;
 - (e) Specification, describing the Council's requirement;
 - (f) A Schedule for insertion of prices and discounts;
- 9.2 Other appropriate documentation may be included in Tender packs, such as Method Statements, drawings, etc.
- 9.3 Officers must consider, if the provision for liquidated and ascertained damages should be obtained from the contractor where the terms of the contract are not duly performed. Liquidated and ascertained damages should equate to a genuine pre-estimate of the losses that the Council would incur as a consequence of the delay or other non-compliance with contract conditions. Advice should be obtained from Legal Service regarding the details of the clauses. The reason for not including them should be kept on file.
- 9.4 When letting contracts officers must consider whether suppliers have access to data and include terms in the contract to protect the council in accordance with the Council's Data Protection

and Information Policy. Winning bidders must ensure they follow the Council's guidance on Data Protection.

- 9.5 All tenders **must** be invited at the same time, requiring all tenders to be returned by a set date and time.
- 9.6 It is not acceptable to allow oral queries. Information which clarifies or amends the tender documentation must be confirmed in writing to the relevant tenderer and **must** also be circulated to the other tenderers at the same time via the e-sourcing tool.

10.0 Late Tenders

- 10.1 The e-sourcing tool will close the tenderbox at the set date and time and late tenders will not be accepted.

11.0 Electronic e-Auctions

- 11.1 The following conditions shall apply:

Tenders may be invited through the use of an electronic reverse auction, provided that:

- (a) the potential costs and benefits of using an e-auction in the market concerned has been fully researched, and is expected to provide best value for money;
- (b) the use of an e-auction was included in the procurement strategy; and
- (c) in the case of contracts covered by the EU Procurement Directive, the use of an e-auction was specified in the Tender Notice.

12.0 Contract Award, Documentation and Retention of Tenders

- 12.1 All contracts must be awarded on the basis of most economically advantageous tender. Where a contract is let in accordance with the Public Procurement Regulations 2015, EU tenders must be subject to a 10-day "standstill" period prior to finalisation of the contract, as required by the regulations. A

voluntary 10 day “standstill” period can be implemented in some tenders above £100,000 and below the EU Threshold.

- 12.2 Every Contract **must** be confirmed in writing, detailing a description of the goods, works or services to be provided, the price to be paid and any discounts or adjustments to be applied, and the times for completion or delivery.
- 12.3 Contracts which exceed £100,000 in amount or value should be under seal except with the agreement of the Head of Democratic and Legal Support Services and where the appropriate Director or the Head of Democratic and Legal Support Services shall so require, a contract of any value below £100,000 shall be under seal.
- 12.4 Directors are responsible for retaining tenders for examination. Arrangements **must** be made with Legal for the storage of deeds. All contract documents, both successful and unsuccessful are retained electronically in accordance with the Council’s retention policy. .

13.0 Director’s Actions

- 13.1 Procurement Regulations may be waived, where the total value of the contract does not exceed EU Thresholds, after considering a written report by the officer authorised to undertake the project., their Head of Service, supported by Procurement and Legal Services, comments by HR and Finance where required, and signed off by the Director of Finance and Support Services, that the waiver is justified because:
- a) the nature of the market for the works to be carried out or the goods or services to be provided has been investigated and has demonstrated that only a single source of supply is available, or it is otherwise clearly in the Council’s interest to do so; or
 - b) the contract is for goods, works or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen – e.g. to protect life or property when no existing contractual arrangement is in

- place, or if the purchase is needed to urgently comply with an order of Civil or Criminal Court; or
- c) the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or English law); or
 - d) the work is funded in full by another Public or Voluntary Organisation that has requested in writing that its own tendering procedures are followed; or
 - e) the purchase is from a supplier where there is an existing obligation to the Council (e.g. under a warranty is to contribute to the cost).

13.2 A Director's action **must** only be in the circumstances listed above, and not to compensate for poor planning or a desire to retain incumbent suppliers through avoidance of competition.

13.3 A record of the decision approving a waiver and the reasons for it must be kept in a service register in Democratic Services.

13.4 Where the contract is subject to the Public Procurement Regulations which implemented the EU Procurement Directive, there are circumstances where the requirement to tender cannot be waived, where:

- (i) the estimated total value of the contract exceeds the relevant EU thresholds, Procurement will advise.

And, in the case of a contract for services,

- (ii) the contract is categorised by the EU as a "priority activity".

13.5 You **must** ensure that any waiver will not breach EU regulations before you get permission to waive the Procurement Regulations. You **must** take Procurement advice if you are in any doubt on the matter.

- 13.6 In the event that it is necessary to waive Procurement Regulations relating to contracts you **must** obtain the written agreement of the Head of Service, Procurement Officer and Director of Finance and Support Services, and Chief Executive.

Rule 3

- (a) Where the Procurement Regulations apply to a Contract a Director's action may be taken to waive any provision, so long as this will not lead to a breach of UK or EU legislation. Waivers relating to contracts may be granted by the Director of Finance and Support Services after reviewing comments by Head of Service, Procurement & Legal Services, HR and Finance and signed by the Director of the Service.
- (b) Waivers are an exception **not to be** sought except where absolutely necessary.

14.0 Extensions and Variations

- 14.1 Subject to any statutory restrictions and compliance with Financial Regulations a Director may authorise the following extensions and variations to an existing contract, following consultation with Procurement and Legal Services

- (a) Either:
- (i) an extension for a particular period provided for within the terms of the original contract (but subject to satisfactory outcomes of contract monitoring); or
 - (ii) a single extension of the contract by up to six months, or 1 year if agreed by Procurement, if there are valid reasons for not reletting the contract upon its original expiry date, provided that the extension will not contravene the Public Procurement Regulations 2015.
- (b) Either:

- (i) a variation, and if relevant a consequent change in price, determined in accordance with the contract terms;
or
- (ii) a variation not within the original contract terms, which is not considered a significant decision, and which does not increase the Council's costs by more than £100,000;
or
- (ii) not exceeding 10% of the original tendered price.

14.2 In any other circumstances a contract variation or extension may be agreed following consultation with Legal Services and Procurement. A report must be submitted to the Director of Finance and Support Services for sign off providing that to do so is consistent with the provisions of Financial Regulations and UK and EU Legislation.

Rule 4

Following consultation with Procurement and Legal Services:

- (a) Subject to compliance with EU and UK legislation, a Director may authorise an extension to a Contract which was provided for in the original contract terms, or for a single extension not exceeding six months.
- (b) A Director may authorise variations, including price variations, determined in accordance with the original contract terms, or other variations which do not increase the Council's costs by more than £100,000, or does not exceed 10% of the original tendered price.
- (c) All other extensions and variations must be signed off as agreed by the Director of Finance and Support Services.

15.0 Consortia and Corporate Contracts

15.1 Recognised consortium or collaborative procurement arrangements which have been properly tendered may be used without further need for competition, dependant on how the arrangement has been set up, provided that the relevant Director having due regard to advice from Procurement:

- (a) is satisfied, with evidence, that such an approach represents the best value for money available;
- (b) is satisfied that use of the arrangements is consistent with all UK and EU legislation;
- (c) is satisfied that the terms and conditions of the arrangement do not place undue restrictions or liabilities upon the Council;
- (d) the parties to the arrangement are recognised public bodies or providers from the private sector operating appropriate procurement arrangements on behalf of the public sector;
- (d) full, open and proper competition in respect of the creation of the contract has taken or will take place in accordance with the relevant UK and EU legislation.

15.2 The tendering and letting of corporate contracts i.e. Stationery are typically, framework arrangements for goods and services bought across Directorates. Where a corporate contract exists, the goods, services or works in question **must** only be bought from the nominated suppliers, unless otherwise agreed by Procurement.

16.0 Clarification and Post-Tender Negotiation

16.1 It is usually acceptable to clarify arrangements with tenderers following opening of Tenders. This might include areas of ambiguity, assumptions or possible errors. Any communication with tenderers must be done through the e-sourcing tool for audit purposes

16.2 In certain restricted circumstances it may be acceptable to negotiate on prices or other features of Tenders, but there are restrictions on the circumstances when post-tender negotiation

may be used. Prior to entering into negotiations, agreement and advice **must** be obtained from Procurement and Legal, and the process **must** be conducted in a fair manner that does not disadvantage or show undue favour to any tenderers. All negotiations **must** be fully documented.

17.0 Here to Help

17.1 The Council has adopted a Here to Help culture which provides an ethical framework for the council and **must** be included in all Tender documentation, and with which all suppliers must comply. The full details of this protocol are available on the Intranet site (link to be added), but in summary, the framework states that suppliers **must** have written policies governing:

- (a) standards of behaviour in respect of employee and director conduct, covering equalities, declarations of conflict, dealing with confidential information, gifts & hospitality, and dealing with the media;
- (b) standards of behaviour on working relationships with Council staff and elected members, including personal relationships, alleged misconduct by Council staff or members, and requests for information;
- (c) whistleblowing, including protected disclosures under the Employment Rights Act 1996.