

## **Part G - Contract Procedure Rules**

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## **Part G - Contract Procedure Rules**

### **1.0 Introduction**

1.1 The purpose of Contract Procedure Rules (CPR) is to set clear rules, responsibilities and actions for the procurement of goods, works and services in respect of the Council. This will ensure a system of openness, integrity and accountability is in place, giving probity and transparency to the process of procurement.

### **2.0 Basic Principles and Compliance**

2.1 All procurement procedures and every contract entered into by the Council must:

- (a) Realise value for money by achieving the optimum combination of whole life costs and quality of outcome.
- (b) Be consistent with the highest standards of integrity.
- (c) Operate in a transparent manner, ensuring fairness in allocating public contracts.
- (d) Comply with all legal requirements including Public Contract Regulations and the European Union treaties.
- (e) Comply with the Council's Constitution, these CPRs and the Council's Financial Procedure Rules (FPRs).
- (f) Comply with the Council Plan and Procurement Strategy.
- (g) Comply with the Procurement Manual which should be read in conjunction with these CPRs.
- (h) Apply these CPRs to any partnership arrangements for which the Council is the accountable body unless the Council agrees otherwise; and
- (i) Enable effective contract management through clarity of performance needs.

2.2 Any dispute or difference as to the interpretation of the Contract Procedure Rules shall be resolved by the Chief Finance Officer.

2.3 Every Officer shall comply with these Rules and any unauthorised failure to do so may lead to disciplinary action.

2.4 Each Corporate Director shall take all such steps as are reasonably necessary to ensure that Officers within their Directorate are aware of, and comply with, these Rules, the Procurement Manual and Finance Manual.

2.5 The Chief Finance Officer shall be responsible for monitoring adherence to these Rules.

### 3.0 Background and Guidance

3.1 Section 5 below sets out the appropriate threshold levels and options available when procuring goods, works and/or services in respect of the Council. It provides direction to the relevant sections on the assumption that the user has appropriate budget allocation and responsibility, and permissions to spend that allocation.

### 3.2 Powers and key decisions

- (a) In consultation with the Monitoring Officer, the Responsible Officer should ensure that the Council has the legal power to enter into any contract and that, in respect of all Contracts regardless of whether they involve the procurement, shall ensure that no contract shall be entered into which is ultra vires.
- (b) The Responsible Officer shall ensure that a written record of the decision to procure a Contract is made in accordance with the Procurement Manual when the value is in excess of European Union (EU) thresholds.
- (c) The acceptance and authorisation limits are set out in Section 5 of these CPRs. It is the responsibility of the Responsible Officer to ensure these limits are complied with.

### 3.3 Officer Responsibilities

- (a) Responsible Officers will comply with these CPRs, the Council's Constitution and all UK and European Union (EU) legal requirements. Responsible Officers must also ensure that any agents, consultants and contractual partners acting on their behalf also comply with these requirements.
- (b) Corporate Directors are responsible for the production of a Forward Procurement Plan (FPP) for their Directorate, supported by the Procurement Team. This will be completed in such format as the Chief Finance Officer shall require and will include the following details:-
  - (i) Contracts for works, supplies and services worth £5,000 or more which the Directorate intends to award in the next financial year (and indicatively for the following two years); and
  - (ii) In respect of each contract to be awarded:
    - the Responsible Officer
    - The subject matter of the Contract
    - the date the procurement process is expected to start
    - the date the contract is expected to start
    - the duration of the contract
    - the contract's annual value
    - the procurement methodology to be adopted
- (c) The Procurement Team will maintain a Contract Register the purpose of which is to:-

- (i) record key details of all Contracts with an aggregate value of £5,001 or more; and
  - (ii) identify a Contract reference number; and
  - (iii) record the contracts, commencement and end date.
- (d) Corporate Directors shall ensure, with the support of the Procurement Team, that:
- (i) all relevant contracts are entered onto the Register and the appropriate contract number recorded;
  - (ii) the Register is maintained by entering new contracts onto it and removing expired contracts from it, in line with the Council's Records Retention and Destruction Policy; and
  - (iii) Original authenticated copies of contracts are to be lodged with the Procurement Team.

### 3.4 **Business Case**

When considering the needs to purchase goods or services, the Responsible Officer must prepare and obtain approval of a business case justifying the proposed approach; details are set out in the Procurement Manual. If the proposed way forward involves procurement, the Responsible Officer must follow the requirements set out below.

### 3.5 **Exclusions**

These rules do not apply to the seeking of offers in relation to a proposed contract, framework agreement or dynamic purchasing system arrangement in respect of the following:-

- The purchase or sale of land
- An interest in land
- The lending or borrowing of funds
- Contracts of employment of an Officer of the Council
- Contracts with statutory undertakings for work which only they can carry out
- Subscriptions to / Membership of professional bodies when only those bodies are suitable
- Contracts for the engagement of Counsel
- Grants awarded which fulfil specific criteria as set by the Constitution

### 3.6 **Training**

Where appropriate, all Officers involved in procurement activities shall have received a level of training commensurate with the nature of the procurement activity being undertaken.

### 3.7 **Prevention of corruption**

Rules and regulations relating to the prevention of corruption are outlined in the

Financial Procedure Rules, and Counter Fraud and Corruption Policy. These must be adhered to at all times.

#### 4.0 Specification

4.1 Responsible Officers must ensure a specification for the goods/services/works being procured is prepared in accordance with the Procurement Manual.

4.2 As part of the preparation of the specification, the Responsible Officer should determine the evaluation approach, for example, most economically advantageous tender (MEAT) – see 4.3 below.

#### 4.3 Most Economically Advantageous Tender (MEAT)

(a) Where both price and quality are to be factors (i.e. where MEAT applies), the quality criteria must be identified and weighting between price and quality established and recorded before bids are requested. The criteria should be stated in the request for bids sent to suppliers. Advice should be sought from the Chief Finance Officer on the design and operation of any evaluation model to be used as part of the selection process.

(b) Should a MEAT approach be used, price/quality bid evaluation models must be lodged with the Finance and Improvement Manager before closing dates/times have expired, to ensure a fair and transparent process. If:-

- (i) A bid other than the lowest of the MEAT (as the case may be) is to be accepted, or
- (ii) Fewer than three bids have been received; then:

the written approval of the Corporate Director (in consultation with the Chief Finance Officer or if the relevant Corporate Director is the Chief Finance Officer, in consultation with the Chief Executive) shall be sought and obtained before the quotation is accepted.

(c) A quotation for a price in excess of £50,000 may be accepted in the case where the estimated price was less than £50,000 if (and only if):

- (i) The price quoted does not exceed that original documented estimated price by more than 10% **and**
- (ii) The written approval of the Corporate Director (in consultation with the Chief Finance Officer) has been obtained.

If the conditions at (i) and (ii) are not met, the Corporate Director must seek tenders in accordance with these rules.

(d) Where a quotation/tender involves payment to the Council, the provisions above shall apply except that the word 'lowest' shall be replaced by the word 'highest' in these paragraphs.

#### 4.4 Pre-Tender Market Testing

Pre-tender market testing / enquiries may only be made following approval and guidance from the Monitoring Officer and s151 Officer, to ensure that procurement regulations are adhered to.

#### 4.5 The Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE')

As part of establishing the scope and specification of the goods/works/services required, it is necessary to establish if TUPE applies. The Responsible Officer must seek and take account of legal and HR advice from within the Council prior to proceeding with procurement, to verify if TUPE applies. If it is deemed that TUPE applies, the Responsible Officer will fully involve HR and Legal in the procurement.

#### 4.6 Key performance measures

Key performance measures must be included as part of the specification. The specification forms the basis of the future Contract agreed with the winning bidder. In order to effectively manage the contract, performance measures need to be established as part of the requirements set out in the specification. Guidance on the inclusion of key performance measures is available in the Procurement Manual.

#### 4.7 Specification of Goods, Materials and Workmanship

Where an appropriate British or European Standard Specification, British or European Standard Code of Practice or Government Departmental specification is current at the date of tender, every contract shall require that, as the case may be, all goods and materials used or supplied and all workmanship shall be at least in accordance with that standard or specification.

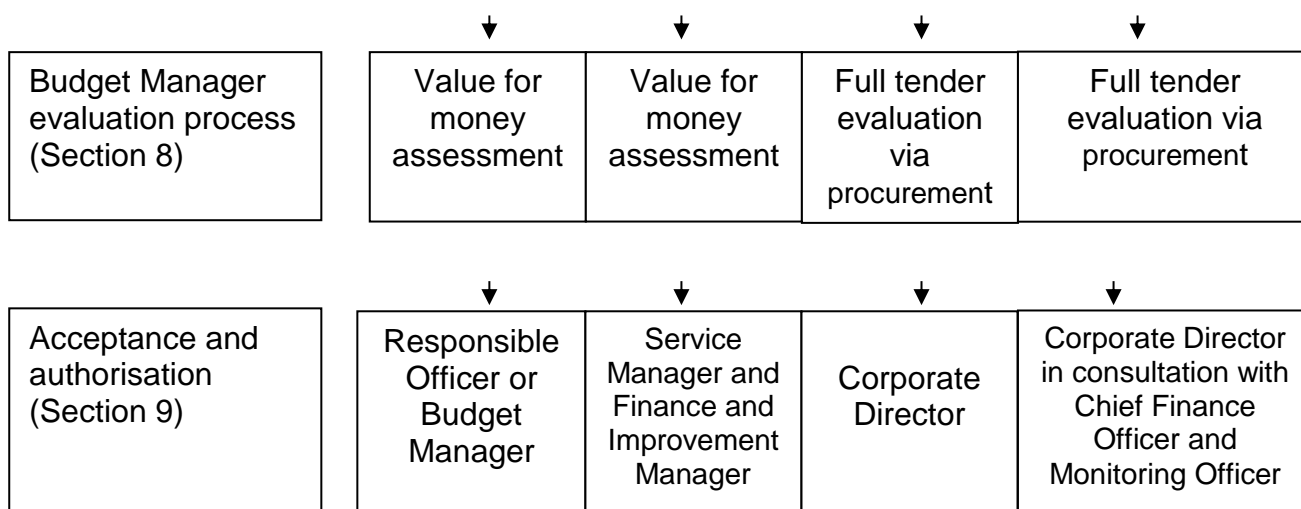
### 5.0 Selection of the Appropriate Procurement Procedure

5.1 The table below is a reference point to the agreed threshold levels and options required as a minimum to be followed when procuring goods, works and/or services in respect of the Council.

5.2 The table gives direction to the relevant sections of the CPRs on the assumption that the Responsible Officer has an available budget allocation and the appropriate responsibility and permissions to spend that allocation.

**Table 1**

Total value of the anticipated spend Over life of contract (Section 5.5)	Nil to £5,000	£5,001 to £50,000	£50,001 to the EU threshold	Above the EU threshold*
	↓	↓	↓	↓
Minimum requirement (Section 6)	Verbal quote(s) evidenced in writing and records maintained	Three written quotes	Full tender process	



\* The relevant threshold at January 2016 is £164,176 for services and £4,104,394 for works

5.3 All contracting arrangement should be procured by one of the following processes and/or methods: -

- A Central Purchasing Body (section 6.1)
- Framework Agreements (sections 6.2)
- Quotation Procedure (sections 6.3)
- The Tender Procedure (sections 6.4 – 6.5)
- Other Procurement routes (section 6.6)
- Electronic Auctions (sections 6.7)
- Partnership Arrangements (sections 6.8)
- Purchasing Cards (section 6.9)

5.4 If the above procurement procedures prove to be unsuitable or not applicable, it is then appropriate to utilise the three procedures as set out below: -

- The Competitive Dialogue Procedure (section 6.6)
- The Competitive Procedure with Negotiation (section 6.6)
- Innovation Partnership (section 6.6)

## 5.5 Thresholds

(a) The required procurement procedures are effective and operational based on a range of set financial thresholds. These relevant thresholds are as follows: -

- Verbal quotations, evidenced in writing – up to and including £5,000
- Formal written quotations – up to and including £50,000
- Tender process - £50,001 and above

(b) The European Union thresholds are established and reviewed every second calendar year in January. The following financial thresholds are effective from January 2016:

- Supplies Contracts (Goods) – £164,176
- Services Contracts - £164,176
- Works Contracts - £4,104,394

- (c) The effective EU threshold figure, referred to in Table 1 above, for both evaluation and acceptance and authorisation is the supplies and services threshold amount. (i.e. Works related tenders would need to be financially evaluated by Finance and authorised & accepted by the Senior Management Team when they exceed £164,176 rather than £4,104,394).
- (d) For the purposes of these financial thresholds, the estimated value of a contract shall be the value of the total consideration payable, net of value added tax (calculated in accordance with HMRC regulations), which the Council expects to be payable under the whole life of the contract.
- (e) Where the Council has a single requirement for goods, works and/or services and a number of contracts have been entered into or are to be entered into to fulfil that requirement, the estimated value for the total consideration payable is the sum that the Council expects to be payable under the total of all of those contracts.
- (f) Where the Council intends to provide any goods, for the purpose of carrying out that contract, to the successful contractor the value of the total consideration payable shall include an estimated value of those goods.
- (g) The estimated value of the total consideration payable in respect of a framework agreement or dynamic purchasing system arrangement is the sum of all the contracts, which could be entered into under the framework agreement or dynamic purchasing system arrangement, over the lifecycle of the contract.
- (h) Where a contract is being arranged through a partnership arrangement, the total cost in respect of all the partners, needs to be accounted for when calculating the total consideration payable.

## **6.0 Procurement Routes**

### **6.1 Central Purchasing Bodies**

- (a) A "Central Purchasing Body" means a body which: -
  - Acquires goods or services intended for one or more other bodies
  - Awards public contracts intended for one or more other bodies
  - Concludes Framework agreements for goods, works and/or services intended for one or more other bodies.

Central Purchasing Bodies are selected through accessing national framework contracts. Examples of central purchasing bodies are the 'Crown Commercial Services (CCS)' and 'Yorkshire Purchasing Organisation (YPO)'.

- (b) The Procurement Team shall approve the use of proposed central purchasing bodies. The records shall be reviewed and agreed by the Monitoring Officer / Chief Finance Officer on at least an annual basis. The Council may purchase goods, works and/or services from or through a Central Purchasing Body.
- (c) Where the Council makes purchases via a Central Purchasing Body, it shall be



deemed to have complied with the Contract Procedure Rules to the extent that the Central Purchasing Body has complied with them and/or similar rules.

- (d) To ascertain whether a Central Purchasing Body is suitable to use, Officers should contact the Procurement Team and refer to the Procurement Manual.

## 6.2 Framework Agreements

- (a) "Framework Agreement" means a general term for an agreement with suppliers which sets out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement.
- (b) To ascertain whether a Framework Agreement has been established or is available for the Council to use, Officers should contact the Procurement Team or refer to the Procurement Manual.
- (c) To establish a Framework Agreement, the following steps are required to be undertaken:

To follow one of the procedures as set out in sections 6.3a) to 6.5b) of these Contract Procedure Rules.

**AND**

Select suppliers to be party to a framework agreement in accordance with the criteria as set out in this section.

- (d) Where the Council awards a specific contract based on a framework agreement, it shall:

Comply with the procedures as set out in this section

**AND**

Apply those procedures only to the suppliers, which are party to the framework agreement.

- (e) When awarding a specific contract on the basis of a framework agreement a further competition must be undertaken between all capable suppliers in the category. Further specific details of awarding contracts through a framework agreement can be found in the Procurement Manual.
- (f) Identification of capable suppliers is at the discretion of the 'Responsible Officer'. All suppliers should be given the same information on which to quote and all proposals considered on a like for like basis. Neither the Council nor the supplier shall include in that specific contracts, terms that are amended from those terms as set out in the original framework agreement.
- (g) Where the Council concludes a framework agreement with only one supplier, it shall:

Award any specific contract within the limits of the terms as set out in the original framework agreement

## **AND**

In order to award a specific contract, the Council may consult in writing with the supplier, requesting that the supplier supplements its specific tender/quotation as appropriate.

- (h) The Council shall not conclude a framework agreement for a period that exceeds 48 months (four years), other than in exceptional circumstances and only after prior approval of the Council's Senior Management Team.

### **6.3 Quotation Procedure**

- (a) A "Quotation" means either a verbal or a written (email, letter, etc...) quotation, which clearly communicates or sets out all aspects of the contract, including its duration and total lifetime cost.
- (b) Where the estimated 'total consideration payable' of the contract is less than or equal to the verbal quotation threshold, then it is appropriate that 'value for money' is achieved.
- (c) There is no formal requirement to seek quotations in a written format, in respect of this verbal quotation threshold, but good practice would be to at least seek a range of verbal quotations. A record should be retained of all verbal quotations. The procedure to be followed is set out in the Procurement Manual.
- (d) The preferred verbal quotation should be confirmed in writing.
- (e) Where the estimated 'total consideration payable' of the contract is more than the verbal quotation threshold of £5,000 but less than or equal to the written quotation threshold of £50,000, then there is a minimum requirement to invite at least three written quotations. If the actual value of the quotation is more than £50,000, authority to proceed is required from the budget holder and the Finance and Improvement Manager.
- (f) If the number of quotations received is less than three, authority to accept a quotation is required from the Finance and Improvement Manager.
- (g) Where there is an acceptance of any quotation, other than the lowest, then this must be in line with pre-agreed criteria and recorded on standard schedules, and been communicated to the supplier in advance of their submissions.
- (h) All quotations and their assessments must be retained for the duration of the contract, or if in relation to a 'one off' arrangement, for a full 12 month period following the financial year in which they were procured.
- (i) All potential Contractors invited to submit quotations shall be provided in all instances with identical information and instructions, and at the same time. Where considered appropriate, Corporate Directors may permit potential Contractors who have been selected to submit quotations under this paragraph

to also submit variant quotations (i.e. quotations which do not comply with some or all of the requirements of the primary quotation). The same opportunity to submit variant quotations must be given to all potential Contractors. All quotations should be received electronically unless:

- (i) The specialised nature of the procurement would require specific tools, devices, file formats, software or specialised office equipment.
  - (ii) Where the procurement documents required for submission are physical or scale models.
  - (iii) The use of electronic means of communication would breach security or the material is of a particularly sensitive nature.
- (j) Each Corporate Director shall maintain electronic or written records of all quotations received in accordance with the Acceptable Use Policy and Information Security Policy and all returned proposals must be submitted to the Procurement Team which will retain a record on the Quotation Database.
- (i) **Procedure for Contracts with a value up to £5,000:** For contracts with a value up to £5,000 the only requirement is for Verbal Quotations to be sought and evidenced in writing.
  - (ii) **Procedure for Contracts with a value between £5,001 and £50,000:** For contracts with a value between £5,001 and £50,000, at least three written quotations shall be requested upon a Request for Quotation. Requests for Quotation should ideally be requested via the eProcurement Portal.
  - (iii) **Procedure for Contracts with a value between £50,000 and EU Procurement Levels:** Any contract with a value between £50,001 and EU Procurement Levels shall be procured upon an Invitation to Tender in accordance with Open or Restricted Procedures.

#### 6.4 Open Tenders

- (a) An "Open Tender" means a procedure leading to the award of a contract whereby anyone may tender for the contract.
- (b) If the estimated value is £50,000 or more, electronic tenders must be invited using the e-tendering system in accordance with the following provisions and in line with guidance set out in the Procurement Manual: The Monitoring Officer and Chief Finance Officer are to be advised before any tenders are invited.
- (c) Before Responsible Officers invite tenders, they must be recorded in writing whether the lowest price or the MEA tender is to be accepted. Where both price and quality are to be factors (i.e. where MEAT applies), the quality criteria must be identified and weighting between price and quality established and recorded before tenders are invited. The criteria, sub-criteria and weighting should be stated in the invitation to tender sent to all bidders. Advice should be sought from the Chief Finance Officer on the design and operation of any evaluation model to be used as part of the selection process.
- (d) All bidders invited to submit tenders shall be provided in all instances with identical information and instructions. Where considered appropriate a

Responsible Officer may, (in consultation with the Chief Finance Officer), permit bidders who have been selected to submit tender in accordance with this paragraph to also submit variant tenders (i.e. tenders which do not comply with some or all of the requirements of the primary tender). Where variants are authorised or required the Council will indicate this in the procurement document, listing the minimum requirements to be met and will ensure the chosen award criteria can be applied to variants as well as conforming tenders, that are not variants. The same opportunity to submit variant tenders must be given to all bidders.

- (e) A copy of the questionnaire and tender evaluation models used must be lodged with the Finance and Improvement Manager before any documents are opened.
- (f) If a Responsible Officer (in consultation with the Chief Finance Officer) considers it appropriate that any invitation to tender shall be made to all potential contractors, the following procedures shall apply:
  - (i) An invitation to tender notice must be given on the e-tendering system and, if appropriate, in a newspaper (which may be local, regional or national but must be appropriate for the subject matter of the tender) and/or in a suitable trade journal where appropriate. Consideration should be given to the subject matter and value of the contract when deciding which form of advertising to use. Where required, an OJEU contract Notice must also be placed. The notice must specify brief details of the subject matter of the contract, how documents may be obtained and the tender closing date.
  - (ii) The deadline date must be at least 35 days after the publication of the first advertisement for the invitation to tender notice, and where relevant, at least 15 days after the last invitation to tender notice is published. Where an OJEU Notice is required, the deadline date must be in accordance with the timescales set out in the Public Contracts Regulations 2015.
  - (iii) The selection and award criteria which are to be applied in evaluation tenders must be recorded in writing before the tenders are invited and must be stated in the document sent to suppliers. Evaluation models must be lodged with the Finance and Improvement Manager before tenders are opened.

## 6.5 Restricted Tenders

- (a) The “Restricted Procedure” means a procedure leading to the award of a contract whereby only interested suppliers selected by the Council may submit tenders for the contract. To select suppliers to be invited to tender, Officers must establish at the Prior Information Notice (PIN) stage whether suppliers are able to perform the contract. This selection must only be on the grounds of economic and financial standing and technical or professional ability directly related to the subject of the contract.
- (b) All Restricted procedure contracts shall be subject to the tendering requirements as set out below. Guidance is provided in the Procurement Manual and from the Procurement Team. Quotations are not acceptable.

- (i) A notice inviting expressions of interest must be given on the e-tendering system and, if appropriate, in a newspaper (which may be local, regional, or national but must be appropriate for the subject matter of the contract) and/or in a suitable trade journal where appropriate. Consideration should be given to the subject matter and value of the contract when deciding which form of advertising to use. When required an OJEU Contract Notice must also be placed. The notice must specify brief details of the subject matter of the contract and invite potential contractors
- (ii) The deadline date must be at least 30 days after the first advertisement for the contract is published and, where relevant, at least 15 days after the last advertisement is published. Where an OJEU Notice is required, the deadline date must be in accordance with the timescales set out in the Public Contract Regulations 2015.
- (iii) Interested parties will be invited to submit an expression of interest
- (iv) After evaluation, invitations to tender shall be sent to at least five bidders selected by the Responsible Officer in consultation with the Chief Finance Officer or, if less than five bidders applied or are considered suitable, such bidders as have been selected by the Responsible Officer in consultation with the Chief Finance Officer.
- (v) The award criteria which are to be applied in evaluating tenders must be recorded in writing before the tenders are invited and must be stated in the documents sent to suppliers. Evaluation models must be lodged with the Finance and Improvement Manager before tenders are opened.
- (vi) The acceptance and authorisation of contracts under the open / restricted / tender procedure must be done by the Officers named in table 1 of 5.2 above.

## 6.6 Other Procurement Routes

Where the Monitoring Officer and Chief Finance Officer agree that it is appropriate, the Competitive Dialogue Procedure, Competitive Procedure with Negotiation or Innovation Partnership may be used in accordance with the Public Contracts Regulations 2015. Acceptance and authorisation of contracts under any procurement route must comply with the requirements set out at table 1 of 5.2 above.

## 6.7 Electronic Auctions

- (a) An "electronic auction" means a repetitive electronic process for the presentation of prices to be revised downwards or of new and improved values of quantifiable elements of tenders, including price, which:
  - Takes place after the initial evaluation of tenders; and
  - Enables tenders to be ranked using automatic evaluation methods
- (b) The Council may only hold an electronic auction when the contract specification can be established with precision and when qualitative thresholds have been established. An electronic auction may use the following procedures:-

- The open tender procedure
  - The restricted tender procedure
  - The negotiated procedure
  - Further competition among the parties to a framework agreement
  - On the opening of competition for contracts to be awarded under a dynamic purchasing system.
  - An electronic auction can be undertaken by a third party on behalf of the Council with the prior approval of the Chief Finance Officer.
- (c) The processes set out above under Tenders should be complied with when undertaking Electronic Auctions. The detailed procedures are set out in the Procurement Manual.

## 6.8 Partnership Arrangements

- (a) The creation of partnership ventures should be set up to include an appropriate framework for their governance arrangements. These governance arrangements should specify and clarify the host body and whether that body's Contract Procedure Rules are effective for all procurement ventures of the partnership.
- (b) The satisfying of the host body's Contract Procedure Rules should be sufficient to comply with these Contract Procedure Rules, but must be checked with the Monitoring Officer and Chief Finance Officer.
- (c) Where no formal governance arrangements are in place for a partnership approach to a procurement venture, each body's Contract Procedure Rules will need to be followed independently.
- (d) The 'leading' partner should primarily follow their own Council's procedure rules, but cater for any differences in these rules across the partners involved.

## 6.9 Purchasing Cards

Where purchasing cards are issued by the Council, the following provisions shall apply:

- (a) Their use shall be subject to the procedures laid down by the Chief Finance Officer;
- (b) Cards shall only be issue to, and used by, Officers nominated by a Corporate Director (in consultation with the Chief Finance Officer); and
- (c) For the purpose of these regulations the payment invoice will constitute evidence in writing of the contract.

## 7.0 General Tender Requirements

7.1 A written tender may only be considered if:-

- (a) The tender has been received electronically through the e-tendering system

- (b) If a specific exception has been given to allow hard copies, the hard copy should be in a sealed envelope marked 'Tender' and indicating the subject matter of the tender, and the identity of the bidder cannot be ascertained from the tender envelope
- (c) The tender has been returned to the Monitoring Officer (or the Procurement Team as designated by the Monitoring Officer) before the tender closing date
- (d) It has been opened after the expiry of the deadline for submissions and at the same time as other tenders for the same subject matter in the presence of at least two Officers authorised to open tenders.

7.2 The Monitoring Officer (or a person designated by the Monitoring Officer) shall be responsible for the reception and safe custody of tenders until they are opened.

7.3 Tenders, whether electronic or hard copy must be opened at the same time and in the presence of the Monitoring Officer (or a person designated by the Monitoring Officer, generally a member of the Procurement Team) or where the Monitoring Officer is undertaking the procurement, the Chief Finance Officer (or an Officer designated by that person). Whoever opens the Tenders shall maintain a record of the identity of the Officer(s) present, the identities of bidders and the tendered sums (where readily ascertainable). A copy of the record shall be provided as soon as practicable to the Finance and Improvement Manager.

7.4 If a Tender is received after the specified tender closing date it may not be considered unless the Monitoring Officer is satisfied that the Tender was submitted electronically or posted or otherwise dispatched in sufficient time to be delivered before the specified time, but that delivery was prevented by an event beyond the control of the bidder and that other Tenders have not been opened.

## **8.0 Evaluation**

8.1 All bids must be evaluated in line with the evaluation criteria set out at the time of issue of the bid documents. It is for the Responsible Officer to determine the evaluation criteria with support from the Procurement Team in line with the Procurement Manual.

8.2 It is good practice to utilise the most economically advantageous tender (MEAT) in most circumstances but sometimes a price only evaluation will suffice. An overview is provided at 4.3 above.

8.3 The evaluation criteria must clearly link to the requirements in the specification and be transparent to all bidders. Further guidance is available in the Procurement Manual.

8.4 The aim of the evaluation process is to secure best value for money (the most economically advantageous tender - 'MEAT' - under EU law) and is defined as:

"The optimum combination of whole life costs and benefits to meet the customer's requirements".

8.5 A panel of at least two Officers should conduct all evaluations and all tenders received shall be subject to the tender evaluation process. The panel will be responsible for recording the details of evaluation process and they shall keep adequate records of the decisions being taken. Where tenders are to be evaluated on the basis of MEAT or price only the Corporate Director shall record the evaluation model to be used to score the selection and award criteria referred to above prior to the tenders being opened. The evaluation model should not be communicated to bidders without the approval of the Chief Finance Officer (in consultation with the Monitoring Officer).

8.6 Full evaluation models, marking guidance or model answers must not be communicated to bidders. If:-

- (a) A tender other than the lowest or the MEAT (as the case may be) is to be accepted, or
- (b) Fewer than three tenders have been received

the written approval of the Corporate Director (in consultation with the Chief Finance Officer or, if the relevant Corporate Director is the Chief Finance Officer, in consultation with the Chief Executive) must be obtained before a tender is accepted and a signed and dated record kept of the reasons for the action taken; however, no such approval can be given in respect of a) above where that contract is subject to the Public Contracts Regulations 2015 other than in exceptional circumstances agreed by the Monitoring Officer.

8.7 Each Corporate Director shall maintain an electronic or written record of all successful bidders in a form approved by the Chief Finance Officer in accordance with the Acceptable Use Policy and Information Security Policy. Where a tender involves payment **to** the Council, the rules above shall apply except that the word 'highest' shall be substituted for 'lowest' in those Rules.

#### 8.8 **Alteration to Tenders / Quotations and Post Tender Negotiations**

Tenders may not be altered by bidders after the tender closing date except:-

- (a) Where the Responsible Officer is satisfied that arithmetical errors having been inadvertently made by the Bidder, such errors can be corrected (see 8.12); or
- (b) Where post tender negotiation is undertaken in accordance with 6.7 above (electronic auctions)

8.9 Post tender negotiations may not be undertaken where the value of the contract exceeds the threshold under the Public Contracts Regulations 2015 (where an OJEU Notice is required). Where post tender negotiations are permitted, post tender negotiations with selected bidders must be in accordance with the following conditions:-

- (a) That the Responsible Officer (in consultation with the Chief Finance Officer) consider that added value may be obtained
- (b) That post tender negotiations are permitted by law



- (c) That post tender negotiations are conducted by a team of suitably experienced Officers approved by the Corporate Director and trained in post tender negotiations
- (d) That a record of the negotiations is kept by the Council
- (e) That a clear record of the added value obtained by the post tender negotiations is incorporated into the contract with the successful bidder.

8.10 The above shall also apply to alterations to quotations and shall not operate to prevent clarification of any tender or quotation to the extent permitted by law and where such clarifications are sought the provisions of the above shall apply except the word 'clarification' shall be substituted for the word 'negotiation' in these Rules.

#### **8.11 Withdrawals of Tenders / Re-tendering**

A bidder may withdraw a tender at any time prior to formal contract being signed or sealed by the Council and the successful bidder. When a bid has been accepted by the Council and the successful bidder then withdraws the bid, the remaining bids may be reconsidered and the next MEAT / lowest bid accepted, provided that Senior Management Team agrees.

#### **8.12 Errors in Bids**

Where evaluation of the bids identifies arithmetical errors in the documents submitted, the Responsible Officer shall amend the bid provided this has no impact on the overall price and clarify the position with the bidder in writing.

#### **8.13 Financial Evaluation**

For tenders, a financial appraisal shall form part of the evaluation and be verified by the Finance Section. This shall be completed in line with the guidance in the Procurement Manual for contracts with estimated values more than £50,000.

#### **8.14 Shortlisting**

Provided the evaluation methodology shared with bidders allows, the Responsible Officer may undertake a two stage process. This will involve shortlisting based on initial evaluation in line with the Procurement Manual. The second stage will identify the winning bidder.

### **9.0 Contract Awarded**

- 9.1 The Council has its own agreed terms and conditions relating to orders/ contracts with the Council. These terms and conditions must be applied to all contractual arrangements unless authorisation from the Monitoring Officer (and legal advisors if required by the Monitoring Officer) and Chief Finance Officer is obtained.
- 9.2 Acceptance and authorisation of contracts to be awarded is to be undertaken in line with the officers named in table 1 of paragraph 5.2.

#### **9.3 Form of Contract**

- (a) A contract for goods or services shall provide that if the contractor fails to deliver part or all of the goods or services within the time(s) specified, the Council may determine that the contract is either wholly or in part incomplete and purchase other goods and/or services of the same or similar description:
- To make good such default; or
  - In the event of the contract being wholly determined as incomplete, to then acquire those goods and/or services remaining to be delivered.
- (b) The contract shall also provide that the additional amount of these other goods and/or services exceeds the original contracted amount, shall be recoverable directly from the original contractor.
- (c) A contract for the execution of works shall provide for liquidated damages to be paid by the contractor in case the terms of the contract are not duly performed or not performed to the agreed standard and quality.
- (d) Every contract for the carrying out of works shall require the contractor to indemnify the Council against any claim which may be made in respect of:-
- Personal injury to any person unless due to the negligence of the Council
  - Against any claim for damage to property of third parties due to the negligence of the contractor.
- (e) The value of the indemnity shall be at least £5 million or to a value specified by the Chief Finance Officer.
- (f) The Responsible Officer shall satisfy him/herself that the indemnity is covered by adequate insurance throughout the period of the contract.
- (g) All variations resulting in a change in contract value shall be supported by adequate documentation and counter signed by the Monitoring Officer. The documentation shall specify the description of the variations, quantities, sizes/volumes/requirements, pound values, relevant dates etc.
- (h) Corporate Directors shall ensure that every consultant engaged holds a Professional Indemnity Insurance Policy to a value of at least £2 million. The terms of engagement must be such that the fees and expenses payable are clearly defined and these should act as an incentive to minimise the cost of works etc.
- (i) In contracts with an estimated total value of more than £500,000, each contractor shall be required to give security for the due performance of the contract by means of a bond of an approved assurance or guarantee company or bank.
- (j) The bond should be for an amount equal to 10% of the total sum of the tender, which is the subject matter of such contract.

#### 9.4 **Signing and Sealing of Contracts**

- (a) Officers with the appropriate delegated authority (see Article 13) only shall sign contracts. For the purpose of these procedure rules a contract can range from an official order with a value of a few pounds to a more formal contract worth several million pounds.
- (b) A contract should only be signed following the appropriate award of that contract in line with these Contract Procedure Rules.
- (c) Officers are empowered to sign contracts to various limits. The following limits will apply unless covered by other specific authorisation or delegation: -
  - Senior Management Team to Council budget limit
  - Corporate Directors to the EU threshold of £164,176 or budget limit, whichever is the lower
  - Service Manager to £50,000 or their budget limit, whichever is the lower.
  - All other staff to the value specified on their delegated authority forms (to a maximum of £5,000).
- (d) Contracts involving leasing, hire or quasi finance arrangements may only be signed by the Chief Finance Officer.
- (e) Refer to Article 13 of the Constitution, which sets out circumstances where contracts must be sealed.

#### 9.5 **Contract Payments – On Account and Final**

- (a) The Chief Finance Officer shall be informed as soon as possible of all contracts, agreements, awards or other instruments involving the payment or receipt of money on behalf of the Council.
- (b) Payment to contractors on account shall be authorised only on a certificate signed by the Service Manager or other duly authorised officer, showing the total amount of the contract, the value of work executed to date, retention of money, amount paid to date, VAT and tax and the amount now certified.
- (c) Every variation on a contract for building or construction works shall be authorised in writing by the appropriate Service Manager or other Responsible Officer nominated by him in writing for that purpose. A copy of the variation shall be forwarded to the Chief Finance Officer promptly.
- (d) When variations result in an overall increase in the amount of an accepted tender or estimate by 10% or £50,000 whichever is the lower, this shall be reported to the Senior Management Team as soon as possible with an estimate of the probable new total cost.
- (e) Senior Management Team may require a report on the contract pressure to be made to the next Corporate Board.
- (f) The final certificate on a contract or accepted estimate shall not be issued by the appropriate officer identified in 9.4c) until they have produced a detailed

statement of account together with such documents as the Chief Finance Officer may require relating to prime cost items and particulars of additions and omissions.

- (g) The duties of an officer identified in 9.4c) under this Regulation may be exercised by any Architect, Engineer or Surveyor, when employed by the Council as a Consultant, where the circumstances require it.

## **9.6 Nominated and Named Sub-Contractors**

- (a) In these Contract Procedure Rules any reference to a contract shall, where appropriate, also be taken to include a sub-contract.
- (b) The appropriate Officer identified in 9.4c), regardless of the value of the sub-contract, be authorised to nominate to the main contractor, acceptance of the tender or quotation that most satisfactorily provides for the most economically advantageous outcome.
- (c) The terms of the above invitation shall require an undertaking by the bidder that if they be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against their own obligations under the main contract in relation to the work or goods included in the sub-contract.

## **9.7 External Supervising Officers**

- (a) It shall be a condition of the employment by the Council of any person (not being an Officer of the Council) to supervise a contract that in relation to such contract they shall comply with these Procedure Rules as if she/he were an employee of the Council. It is the role of the Responsible Officer undertaking the procurement to ensure this is communicated to external supervising officers.
- (b) Responsible Officers (in consultation with the Chief Finance Officer) shall consider whether to include provision for the payment of liquidated damages by a Contractor for breach of contract in all contracts which exceed £50,000 in value.
- (c) When considered appropriate by a Responsible Officer (in consultation with the Chief Finance Officer) the Contractor will be required to provide a performance bond to secure the performance of the contract. Such performance bonds should provide for a sum of not less than 10% of the total value of the contract or such other sum as the Chief Finance Officer considers appropriate.

## **9.8 Performance Management**

All contracts must include key performance measures to ensure the effective management of the contract awarded. Guidance on performance measures and management is found in the Procurement Manual.

## **10.0 Contract Monitoring**

- 10.1 The Responsible Officer shall take all such steps as are necessary to monitor and review the performance of the Contract, having regard to its value, nature,

duration and subject matter. As part of the monitoring and review process the Responsible Officer shall maintain adequate records of contract performance and details of review meetings with the Contractor. Such record and details shall be made available to Internal Audit and the Procurement Team whenever required.

## 10.2 Cancellation of Contracts

- (a) The Council must ensure its rights for none or poor performance of a contract. Any Responsible Officer of the Council has the power to terminate a contract based on assessed performance against those specified rights. All contracts must include an appropriate clause to that effect.
- (b) The Responsible Officer must ensure that the reporting of the use of these arrangements are communicated in line with the Council's Scheme of Delegations.
- (c) The following clause shall be inserted into every written Council contract:

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

- 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
- Commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972 or
- Commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council Members, contractors or employees".

- (d) Any clause limiting the contractors' liability shall not apply to this clause.

## 11.0 Exceptions to Contract Procedure Rules

11.1 A Responsible Officer does not need to invite quotations or tenders in the following circumstances:

- (a) Purchases via framework agreements which have been established by other public sector bodies or consortia and where such framework agreements are lawfully accessible to the Council, or
- (b) Purchases at public auctions, or
- (c) the purchase of supplies, work or services which are of such a specialised nature as to be obtainable from one contractor only, except where the value of the contract exceeds the relevant threshold of the Public Contracts Regulations 2006; or
- (d) The instruction of Counsel by the Monitoring Officer; or

- (e) Repairs to or the supply of parts for existing proprietary machinery or plant except where the value of the contract exceeds the relevant threshold of the Public Contracts Regulations 2015.

This shall be referred to as a request for an 'exception'.

11.2 Contracts where the Monitoring Officer and the Chief Finance Officer agree that for reasons of extreme urgency brought about by unforeseeable events not attributable to the Council, the timescales for obtaining quotations or tenders cannot be met.

11.3 Specific exceptions to Contract Procedure Rules are permitted in such other circumstances as the Monitoring Officer and the Chief Finance Officer may agree.

11.4 A request for an 'exception' shall be made using a form prescribed by the Monitoring Officer and the Chief Finance Officer which shall specify the reasons for the request and include a completed risk assessment of the proposal.

11.5 The Monitoring Officer shall ensure the maintenance of a register of all requests made under this paragraph and the responses given to them, normally this will be retained by the Procurement Team.

11.6 A written record shall be signed and dated by the Corporate Director, whenever rules 11.1 – 11.5 apply.

#### **11.7 Breaches of Contract Procedure Rules**

Breaches of CPRs are extremely serious matters and will be fully investigated and reported to Senior Management Team and the Audit, Governance and Standards Committee as the Chief Finance Officer / Monitoring Officer deem appropriate.

#### **12.0 Declaration of Interests**

12.1 If it comes to the knowledge of a Member, Responsible Officer or other Officer that a Contract in which he has an interest (determined in accordance with the Members' and/or Officers' Code of Conduct as appropriate) has been or is proposed to be entered into by the Council, he/she shall immediately give written notice to the Monitoring Officer.

#### **13.0 Procurement Manual**

13.1 All those involved in conducting procurements on behalf of the Council shall have regard to the guidance in any Procurement Manual current at the time in respect of any procurement process.

#### **14.0 Revision of Contract Procedures Rules**

14.1 The Chief Finance Officer shall review these Contract Procedures Rules on an annual basis and report to the Audit, Governance and Standards Committee and / or Council if appropriate.

## Definition of Terms

<b>A</b>		
<b>B</b>	Bid	A <u>bid</u> is a submission of a quotation or a tender setting out the basis on how a potential supplier will contract with the Council.
	Bidder	A <u>bidder</u> is the person or organisation that has submitted a quotation or tender setting out the basis on how a potential supplier will contract with the Council.
	Budget Manager	<u>Budget Manager</u> is a nominated person who has responsibility for managing a budget in line with the Finance Manual and Finance Procedure Rules.
<b>C</b>	Call off	A <u>Call Off</u> is an individual contract awarded under a framework agreement for the provision of particular services, goods or works. There are two ways to award call-offs under a framework agreement, either Direct Award if the terms given in the framework agreement are sufficient enough to cover a particular requirement, or by Mini-Competition. A mini competition or mini tender can take place between all suppliers/contractors appointed on the framework who are able to meet the particular needs. In conducting a Mini-Competition the basic terms of the framework cannot be re-negotiated, nor can the main specification be substantially changed.
	Central Purchasing Body	A <u>Central Purchasing Body</u> means an organisation which:- <ul style="list-style-type: none"> <li>• Acquires goods or services intended for one or more other bodies</li> <li>• Awards public contracts intended for one or more other bodies</li> <li>• Concludes Framework Agreements for goods, works and/or services intended for one or more other bodies</li> <li>• Central Purchasing Bodies are selected through accessing national framework contracts</li> </ul>
	Chief Finance Officer	The <u>Chief Finance Officer / s151 Officer</u> is defined in Part 3 of the Council's Constitution, under Scheme of Delegation.
	Competitive Dialogue	<u>Competitive Dialogue Procedure</u> is a prescribed form of procurement involving ongoing dialogue throughout the process. It is explained in the Public Contract Regulations.
	Competitive Dialogue with Negotiation	<u>Competitive Procedure with Negotiation</u> is a prescribed form of procurement whereby economic operators may submit a request to participate in a call for competition.
	Contract Register	The <u>Contract Register</u> is a register of all contracts with a total value over £5,000 held by the Council. This is retained by the procurement section.
	Corporate Director	A <u>Corporate Director</u> is a senior officer and director who is responsible for a group of services as set out in and approved by the Council's pay policy and structure.
Council Plan	The <u>Council Plan</u> is the plan the Council has adopted which sets out its approach to the delivery of services and objectives for the Council for a fixed period of time.	

	Counter Fraud Policy	The <u>Counter Fraud Policy</u> is a policy adopted by the Council setting out how it will address potential fraud and corruption.
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<b>E</b>	Electronic Auction	An " <u>Electronic Auction</u> " means a repetitive electronic process for the presentation of prices to be revised downwards or of new and improved values of quantifiable elements of tenders, including price, which: <ul style="list-style-type: none"> <li>• Takes place after the initial evaluation of tenders; and</li> <li>• Enables tenders to be ranked using automatic evaluation methods</li> </ul>
	EU Thresholds	The <u>European Union thresholds</u> are set out in the European public contracts directive (2014/24/EU) and apply to public authorities including, amongst others, government departments, local authorities and NHS Authorities and Trusts. They are set out at paragraph 5.6.
	EU Treaties	The <u>EU Treaties</u> are the Treaties of the European Union (EU) between its member states, setting out the Constitutional basis of the Union. They establish the various EU institutions together with their remit, procedures and objectives. Thresholds are net of VAT.
	Exception	An <u>exception</u> is when the Responsible Officer is granted authority not to comply with Contract Procedure Rules in line with section 11 of the rules set out above.
	Expression of Interest	An <u>Expression of interest</u> is the process of seeking an indication of interest from potential service providers who are capable of undertaking specific work.

<b>F</b>	Finance Manual	The <u>Finance Manual</u> is a set of procedures which support the Councils' Finance Procedure Rules. It explains how the Finance Procedure Rules should be implemented and complied with.
	Financial Procedure Rules	The <u>Financial Procedure Rules</u> are the procedures that the Council agrees Officers will comply with in relation to all financial transactions and budgeting.
	Forward Procurement Plan	The <u>Forward Procurement Plan</u> is a schedule of procurements that are required to be undertaken over the forthcoming 3 years, showing timescales for planning and implementing identified contracts following procurement
	Framework Agreement	A <u>Framework Agreement</u> means a general term for an agreement with suppliers, which sets out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement.

<b>G</b>	Goods	<u>Goods</u> refer to a physical commodity – see also 'Works' and 'Services'.
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<b>H</b>	HMRC	Her Majesty's Revenues and Custom
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<b>I</b>	Innovation Partnership	<u>Innovation partnership</u> is a prescribed form of procurement involving selecting a partnership at the outset of a procurement process. It is explained in the Public Contract Regulations.
	Invitation to Tender	The term <u>Invitation to Tender</u> is a special procedure for generating competing offers from different bidders looking to obtain an award of business activity in works, supply, or service contracts. It is important that the Invitation to Tender contains all the information and detail needed to enable a bidder to compile a fully formed tender for the requirement.
<b>J</b>		
<b>K</b>		
<b>L</b>		
<b>M</b>	MEAT	The <u>Most Economically Advantageous Tender</u> criteria enables the contracting authorities to take account of criteria that reflect quality, technical and sustainable aspects of the tender submission as well as price when reaching an award decision.
	Monitoring Officer	The <u>Monitoring Officer</u> is defined in Part 3 of the Council's Constitution, under Scheme of Delegation.
<b>N</b>	Negotiated Procedure	<u>Negotiated Procedure</u> is a prescribed form of procurement involving negotiation throughout the process. It is explained in the Public Contract Regulations.
<b>O</b>	OJEU	<u>OJEU</u> is the 'Official Journal of the European Union'
	Open Tender	An <u>Open Tender</u> means a procedure leading to the award of a contract whereby anyone may tender for the contract.
<b>P</b>	Performance Bond	A <u>Performance Bond</u> is a deposit paid by the supplier as a way of guaranteeing its performance. Failure to perform could result in the deposit not being returned to the supplier.
	Prior Information Notice (PIN)	A <u>Prior Information Notice</u> is used as a means of calling for competition in place of a contract notice (Regulation 28) and can also be used in place of a Pre-Qualification Questionnaire stage with selected suppliers being taken straight to the tendering stage. It can also be used as a call to competition but it must contain the information outlined in Annex V Part B I and II in the 2014 Procurement Directive.
	Procurement Manual	The <u>Procurement Manual</u> is a set of procedures which support the Council's Contract Procedure Rules. It explains how the Contract Procedure Rules should be implemented and complied with.
	Procurement Strategy	The <u>Procurement Strategy</u> is the Council's agreed approach to ensure it is fully compliant with regulations and obtains value for money for the Council when undertaking all procurements.
	Public Contract Regulations	The <u>Public Contract Regulations 2015</u> set out the legal framework for public procurement which will apply when contracting authorities seek to acquire supplies, services or work.

<b>Q</b>	Quotation	A <u>Quotation</u> means either a verbal or a written (email, letter, etc.) quotation, which clearly communicates or sets out all aspects of the contract, including its duration and total lifetime cost.
	Verbal quotation	See 'V'
	Written quotation	See 'W'

<b>R</b>	Records, Retention and Destruction Policy	The Council's <u>Records, Retention and Destruction Policy</u> is part of a suite of Information Governance policies and procedures setting out how long records should be retained and when they should be destroyed. This covers electronic records and hard copy documents.
	Restricted Procedure	The " <u>Restricted Procedure</u> " means a procedure leading to the award of a contract whereby only interested suppliers selected by the Council may submit tenders for the contract.
	Responsible Officer	A <u>Responsible Officer</u> is the Officer responsible for procuring and contracting specific goods and services for the Council. The Responsible Officer will be designated by the relevant Corporate Director and would normally be the Service Manager, unless the Corporate Director decides otherwise.

<b>S</b>	S151 Officer	The <u>s151 Officer / Chief Finance Officer</u> is defined in Part 3 of the Council's Constitution, under Scheme of Delegation
	Senior Management Team	The <u>Senior Management Team (SMT)</u> comprises the Council's Chief Executive and Corporate Directors
	Services	<u>Services</u> are the delivery of a resource which provides an outcome – see also 'Goods' and 'Works'
	Service Manager	<u>Service Manager</u> is a manager of a service for the Council
	Specification	A <u>Specification</u> is a written explanation of the goods / services the Council wishes to purchase / acquire

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<b>U</b>	Ultra vires	The Council is acting ' <u>ultra vires</u> ' (Latin for 'beyond the powers') if it undertakes decisions / actions that it does not have the power to do.
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<b>V</b>	Verbal quotation	A <u>verbal quotation</u> means a quotation that is not confirmed in writing which is compliant with the specification requirements of the goods / services to be provided. It will be provided in advance of ordering of works and is subsequently substantiated by an order and invoice.
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<b>W</b>	Written quotation	A <u>written quotation</u> means a quotation confirmed in writing which is compliant with the specification requirements of the goods / services to be provided.
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	Works	<u>Works</u> relate to the activity and materials associated with the accomplishment of a physical task – see also ‘Goods’ and ‘Services’
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<b>X</b>		
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<b>Y</b>		
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<b>Z</b>		
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