

Public Document Pack

CONSTITUTION AND ETHICS COMMITTEE RECOMMENDATION REPORTS

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COUNCIL	AGENDA ITEM No. 9(c)
12 OCTOBER 2022	PUBLIC REPORT

EXECUTIVE AND COMMITTEE RECOMMENDATIONS TO COUNCIL

CONSTITUTION UPDATES

The Constitution and Ethics Committee, at its meeting on 6 October 2022, received a report in relation to a range of constitution updates.

The Committee considered a number of recommendations in relation to the agenda structure for Full Council, process for Questions on Notice, process for Motions with Significant Implications, naming conventions within the Constitution and the Officer Employment Rules in relation to Deputy Chief Officers and Cabinet Member objection period.

Following debate, the Committee determined to make the below recommendations to Full Council.

IT IS RECOMMENDED that Council agree to update the Constitution as follows:

Constitution Naming Conventions

1. That Members have discretion as to how they wish to be addressed, including allowing the Mayor the discretion over whether they are addressed as “Mr Mayor”, “Madam Mayor”, or in the same format as Councillors, for example, “Mayor” and then their surname.

Officer Employment Rules

2. That the reference to two clear days for objections to be registered to the Leader be amended, as at Appendix 2 to the report, it allow the Leader to confirm once the appointment has been made that no objections had been received.

The original report and relevant updated appendix are attached.

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CONSTITUTION AND ETHICS COMMITTEE	AGENDA ITEM No. 5
6 OCTOBER 2022	PUBLIC REPORT

Report of:	Fiona McMillan, Director of Law and Governance and Monitoring Officer	
Cabinet Member(s) responsible:	Councillor Coles, Cabinet Member for Finance and Corporate Governance	
Contact Officer(s):	Fiona McMillan, Director of Law and Governance and Monitoring Officer	Tel.

CONSTITUTION UPDATES

RECOMMENDATIONS	
FROM: <i>Fiona McMillan, Director of Law and Governance and Monitoring Officer</i>	Deadline date: N/A
<p>It is recommended that the Constitution and Ethics Committee:</p> <p>Council Agenda Structure and Questions on Notice</p> <p>1. Consider any changes to the Council Standing Orders it wishes to recommend to Full Council in relation to the order of Council business.</p> <p>2. Consider any changes to the Council Standing Orders it wishes to recommend to Full Council in relation to the process for submitting, asking and answering Questions on Notice.</p> <p>Motions with Significant Implications</p> <p>3. Consider any changes to the Council Standing Orders it wishes to recommend to Full Council in relation to Motions with Significant Implications.</p> <p>Constitution Naming Conventions</p> <p>4. Consider the recommendation of the Task and Finish Group to promote equality and diversity amongst Councillors with regards to naming conventions and make any recommendations to Full Council</p> <p>Officer Employment Rules</p> <p>5. Consider and recommend to Full Council updating the Officer Employment Rules as set out in section 4.9 of the report</p>	

1. ORIGIN OF REPORT

1.1 This report is submitted to the Constitution and Ethics Committee following a request from the Monitoring Officer and as part of the Committee's work programme.

2. PURPOSE AND REASON FOR REPORT

2.1 The purpose of this report is to review and update the constitution and recommend to Full Council any changes to the constitution as agreed by the Committee.

- 2.2 This report is for Constitution and Ethics Committee to consider under its Terms of Reference No. 2.7.2.1

Authority to oversee the operation of the Council's Constitution and authority to make recommendations to Full Council as to amendments and improvements to the Council's Constitution (including the codes and protocols) subject to the receipt and consideration of a report prepared by the Monitoring Officer, with the exception of those matters under the remit of the Executive.

3. TIMESCALES

Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	N/A
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4. BACKGROUND AND KEY ISSUES

COUNCIL AGENDA STRUCTURE AND QUESTIONS ON NOTICE

- 4.1 At the Constitution and Ethics Committee meeting in March 2022 the Committee debated 'Ward Specific' questions and agreed to leave the process as it was, with a more general consideration of Questions on Notice to be brought to a future meeting, as well as consideration of the overall Council agenda structure.

The order of business for normal business meetings of Council is set out within Council Standing Orders (at paragraph 2.1). An example of what a typical Council agenda currently looks like is set out at **Appendix 1**.

Council Standing Orders 16 and 18 relate to Questions on Notice from the public and Members respectively.

Questions on Notice from the public are heard first, with a 30-minute overall time limit. Any petitions from the public or Members are then received, prior to taking any questions from Members. Question on Notice from Members have a separate time limit of 30-minute for questions to Cabinet Members and Chairs, and an additional 15-minutes for questions to Combined Authority Representatives.

Currently, the public are limited to two questions each, with Members also being limited to two questions each to the Cabinet and Chairs, with one additional question available for Combined Authority Representatives.

Possible alterations that could be considered to the process are:

- Amending the number of questions permitted for each member of the public or Council Member.
- Introducing a limit on the total number of questions permitted at each meeting.
- Amending the various time limits for asking Questions on Notice.

MOTIONS WITH SIGNIFICANT IMPLICATIONS

- 4.2 At the Full Council meeting held on 3 March 2021 the further criteria of 'Motions with Major Implications' was added to Council Standing Orders. This required motions with significant resource implications (the equivalent of £100,000 or more) or a significant impact on Council policy or procedures, the Council's strategic/contractual partners, or the city as a whole be received in draft form 14 clear days before the meeting. Nine clear days before the meeting such motions will be published alongside a briefing note from the relevant Director.

This was considered by the Committee at its meeting in November 2021, where it was agreed to continue with the revised process and review it again in six-months' time.

The Committee may wish to change this process in some manner, including definitions, deadlines, or reverting to the previous process which made no distinction between 'significant' implications or 'non-significant' implications.

CONSTITUTION NAMING CONVENTIONS

- 4.3 The Task and Finish Group to promote equality and diversity amongst Councillors recommended that the constitution should be amended to update the use of any "Chairman" title to "Chair" and that it should be at the Mayor's discretion whether they are addressed as "Mr Mayor", "Madam Mayor" or in the same format as Councillors, for example "Mayor" and then surname.
- 4.4 The Committee may wish to consider further options with regards to the naming conventions, which could include allowing those members appointed to chair a committee to decide individually their preference.

OFFICER EMPLOYMENT RULES

- 4.5 The Officer Employment rules set out the rules that govern the way that officers are appointed and dismissed and focus in particular on the role that elected members have in officer appointments and dismissals.
- 4.6 Within the Officer Employment rules it sets out the period within which objection from a member of the executive to the appointment or dismissal is to be made to the Leader is at least 2 clear days.
- 4.7 The regulations set out in the Local Authorities (Standing Orders) (England) Regulations 2001, as amended, sets out the parameters for notifying members of the Executive on the appointment that the Employment Committee wishes to make:
- (b) the proper officer has notified every member of the executive of the authority of—
 - (i) the name of the person to whom the appointor wishes to make the offer;
 - (ii) any other particulars relevant to the appointment which the appointor has notified to the proper officer; and
 - (iii) the period within which any objection to the making of the offer is to be made by the executive leader on behalf of the executive to the proper officer; and
 - (c) either—
 - (i) the executive leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the appointor that neither he nor any other member of the executive has any objection to the making of the offer;
 - (ii) the proper officer has notified the appointor that no objection was received by him within that period from the executive leader; or
 - (iii) the appointor is satisfied that any objection received from the executive leader within that period is not material or is not well-founded.
- 4.8 There is no legal specified time period for which well-founded objections need to be given to the Leader. It is therefore suggested that the Officer Employment rules are updated to modify this given the Leader sits on the Employment Committee.
- 4.9 The Chief Executive and Assistant Director of Human Resources have also requested that the Officer Employment Rules, along with the terms of reference of the Employment Committee, are amended to remove the requirement for the Employment Committee to appoint Deputy Chief Officers, as this makes the process overly onerous in terms of timescales. There is no legal requirement for this to happen and it is not a usual approach for a council to take, as most focus solely on Chief Officer appointments only in order to fulfil legal requirements. It is proposed that

this requirement is removed so appointment is the responsibility of the Chief Executive as Head of Paid Service.

Proposed amendments to Officer Employment Rules are attached at Appendix 2 and if agreed, amendments will also be made to the terms of reference of Employment Committee.

5. CONSULTATION

- 5.1 Members of the Constitution and Ethics Committee are consulted and agree any recommendations before being presented to Full Council
- 5.2 With regards to the Officer Employment Rules, consultation has taken place with the Chief Executive and Assistant Director HR and Organisational Development.

6. ANTICIPATED OUTCOMES OR IMPACT

- 6.1 If any of the changes to the constitution are agreed they will be presented to Full Council.

7. REASON FOR THE RECOMMENDATION

- 7.1 These recommendations are presented to Committee to strengthen the constitution and streamline some of the processes and procedure where appropriate.

8. ALTERNATIVE OPTIONS CONSIDERED

- 8.1 The Committee may decide to not agree to any further changes and keep the status quo.

9. IMPLICATIONS

Financial Implications

- 9.1 There are none.

Legal Implications

- 9.2 There are none.

Equalities Implications

- 9.3 There are none.

10. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

- 10.1 [Officer Employment Rules Part 4 Section 9](#)
Council Standing Orders
Recommendations and reports from the Task and Finish Group to promote equality and diversity amongst Councillors

11. APPENDICES

- 11.1 Appendix 1 – Example Council Agenda Frontsheet
Appendix 2 – Officer Employment Rules – Track Changes

Section 9 - Officer Employment Procedure Rules

1. INTRODUCTION

- 1.1. The Council has people working for it (called 'officers') to give advice, implement decisions and manage the day-to-day delivery of its services. Some officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. These rules govern the way that officers are appointed and dismissed and focus in particular on the role that elected members have in officer appointments and dismissals.

2. DEFINITIONS

- 2.1. In these rules:
- "Chief Officer" means a statutory chief officer or a non-statutory chief officer who, as respects all or most of the duties of his/her post, reports directly to the Head of Paid Service
 - "Deputy Chief Officer" means a Service Director or Assistant Director who as respects all or most of the duties of his/her post, reports directly to a chief officer
 - ~~A Head of Service or position of an equivalent level or below shall not be regarded as a Chief Officer or Deputy Chief Officer even though they may report directly to a Chief Officer or the Head of Paid Service.~~
 - Proper Officer means the Head of Paid Service, Monitoring Officer, Assistant Director HR & Development or their delegated officer.

3. RECRUITMENT OF HEAD OF PAID SERVICE, CHIEF OFFICERS AND DEPUTY CHIEF OFFICERS

- 3.1. Where the Council proposes to appoint a Head of Paid Service, Chief Officer or Deputy Chief Officer the Council will draw up a statement specifying:
- (a) the duties of the officer concerned; and
 - (b) any qualifications or qualities to be sought in the person to be appointed.
- 3.2. Where it is proposed that the appointment will not be made exclusively from among their existing officers the Council will make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it;
- 3.3. The Council will make arrangements for a copy of the statement mentioned above to be sent to any person on request.

4. APPOINTMENT OF HEAD OF PAID SERVICE

- 4.1. The full Council will approve the appointment of the Head of Paid Service following the recommendation of such an appointment by the Employment Committee (or such other Committee as the Council shall determine), provided that the Committee includes at least one Cabinet Member
- 4.2. Before any recommendation is made by the Committee to Council, every Cabinet Member must be notified of:
- (a) the name of the person to be appointed;
 - (b) any other particulars relevant to the appointment;
 - (c) the period within which objection to the appointment or dismissal is to be made; which shall be at ~~least 2 clear days~~ the point the Leader has confirmed no objection to the proper officer.
- 4.3. The full Council may only approve the appointment where no material or well-founded objection has been made by the Leader or Cabinet Member.

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5. APPOINTMENT OF CHIEF OFFICERS & DEPUTY CHIEF OFFICERS

- 5.1. The Employment Committee will approve the appointment of Chief Officers and Deputy Chief Officers provided that the Committee includes at least one Cabinet Member. For the

Part 4, Section 9 - Officer Employment Procedure Rules

appointment of a Chief or Deputy Chief Officer, the relevant Cabinet Member is invited and entitled to attend the Employment Committee meeting in its entirety

- 5.2 Before any decision is made by the Committee every Cabinet Member must be notified of:
- (a) the name of the person to be appointed;
 - (b) any other particulars relevant to the appointment;
 - (c) the period within which objection to the appointment is to be made; which shall be at ~~least 2 clear days~~ the point the Leader has confirmed no objection to the proper officer.
- 5.3 The Committee may only approve the appointment of a Chief Officer or Deputy Chief Officer where no material or well-founded objection has been made by the Leader on behalf of himself or other Cabinet Member.

6. DISCIPLINARY ACTION & DISMISSAL OF THE HEAD OF PAID SERVICE, CHIEF FINANCE OFFICER AND MONITORING OFFICER

- 6.1 The full Council will approve the dismissal of the Head of Paid Service, Chief Finance Officer and Monitoring Office following a Recommendation of dismissal by the Independent Panel.
- 6.2 Independent persons would be invited to be appointed to the panel in the following order of priority:
- An independent person who has been appointed by the council and who is a local government elector
 - Any other independent person who has been appointed by the council
 - An independent person who has been appointed by another council or councils
- 6.3 The Council will pay remuneration to the Independent Panel Members which shall be limited to the level of remuneration paid to independent persons who are members of the Standards Committee.
- 6.4 Before any recommendation is made by the Independent Panel to Council, every Cabinet Member must be notified of:
- (a) the name of the person to be dismissed;
 - (b) any other particulars relevant to the dismissal;
 - (c) the period within which objection to the dismissal is to be made; which shall be at ~~least 2 clear days~~ the point the Leader has confirmed no objection to the proper officer.
- 6-5 The full Council may only approve the dismissal where no material or well-founded objection has been made by the Leader or other Cabinet Member.

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7. DISMISSAL OF OTHER CHIEF OFFICERS AND DEPUTY CHIEF OFFICERS

- 7.1. The Employment Committee will approve the dismissal of all other Chief Officers and Deputy Chief Officers provided that the Committee includes at least one Cabinet Member
- 7.2. Before any decision is made by the Committee every Cabinet Member must be notified of:
- (a) the name of the person to be dismissed;
 - (b) any other particulars relevant to the dismissal;
 - (c) the period within which objection to the appointment or dismissal is to be made; which shall be at ~~least 2 clear days~~ the point the Leader has confirmed no objection to the proper officer.
- 7.3. The Committee may only approve the dismissal of a Chief Officer or Deputy Chief Officer where no material or well-founded objection has been made by the Leader on behalf of himself or other Cabinet Member.

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8. APPOINTMENT AND DISMISSAL OF OTHER OFFICERS

- 8.1. Appointment of officers other than Chief Officer, Deputy Chief Officer, assistants to political groups and an assistant to the Mayor is the responsibility of the Head of Paid Service or his/her nominee, and may not be made by Members.
- 8.2. Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group.
- 8.3. The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted

Issue date August 2015
Version 004

Part 4, Section 9 - Officer Employment Procedure Rules

child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Member or officer of the Council or of the partner of such persons.

- 8.4. No candidate related to a Member or an officer will be appointed without the authority of the relevant chief officer or an officer nominated by him or her.
- 8.5. Any candidate who fails to disclose such a relationship will be disqualified from appointment. The content of this paragraph will be included in any recruitment information.
- 8.6. The Council will disqualify any applicant who directly or indirectly seeks the support of any Member for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- 8.7. No Member will seek support for any person for any appointment with the Council.
- 8.8. This does not preclude a Member or the Mayor from giving a written reference for a candidate for submission with an application for appointment.
- 8.9. Members will not be involved in the dismissal of any officer below Deputy Chief Officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, procedures, as adopted from time to time which may allow a right of appeal to Members in respect of dismissals.

9. PUBLICATION OF SALARIES AND EXPENSES OF THE CHIEF EXECUTIVE, AND CHIEF OFFICERS

- 9.1 The Council will publish the salaries and expense claims of its Chief Executive, and Chief Officers on an annual basis at the same time as the allowances and expense claims of its elected Members are published. This information will be published on the Council's website in accordance with the Transparency Code.

*Issue date August 2015
Version 004*

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COUNCIL	AGENDA ITEM No. 9(d)
12 OCTOBER 2022	PUBLIC REPORT

EXECUTIVE AND COMMITTEE RECOMMENDATIONS TO COUNCIL

APPOINTMENT TO OUTSIDE BODIES AND APPOINTMENT OF COUNCIL CHAMPIONS

The Constitution and Ethics Committee, at its meeting on 6 October 2022, received a report in relation to appointments to outside bodies and appointment of Council champions.

The Committee considered a number of recommendations, including the process for appointments to outside bodies, the appointment of Council Champions, and appointments to the Combined Authority Board.

Following debate, it was determined to make the following recommendations to Full Council.

IT IS RECOMMENDED that Council agree:

1. That the Constitution be amended so that appointments to outside bodies be agreed at Annual Council.
2. That the Constitution be amended to make clear that the Leader of the Council would be the Council’s representative, ex officio, on the Cambridgeshire and Peterborough Combined Authority Board, by virtue of holding the Office of Leader and that the Deputy Leader would be the substitute representative, ex officio, on the Cambridgeshire and Peterborough Combined Authority Board, by virtue of holding the office of Deputy Leader.

The original report is attached.

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CONSTITUTION AND ETHICS COMMITTEE	AGENDA ITEM No. 6
6 OCTOBER 2022	PUBLIC REPORT

Report of:	Fiona McMillan, Director of Law and Governance and Monitoring Officer	
Cabinet Member(s) responsible:	Councillor Coles, Cabinet Member for Finance and Corporate Governance	
Contact Officer(s):	Fiona McMillan, Director of Law and Governance and Monitoring Officer	Tel. 452409

APPOINTMENT TO OUTSIDE BODIES AND APPOINTMENT TO COUNCIL CHAMPIONS

RECOMMENDATIONS	
FROM: Director of Law and Governance	Deadline date: N/A
<p>It is recommended that the Constitution and Ethics Committee:</p> <p>Appointments to Outside Bodies</p> <p>1. Consider whether to recommend to Full Council any changes in the process for appointing Members to outside bodies.</p> <p>Appointments to Council Champions</p> <p>2. Recommend to Full Council the inclusion in Council Standing Orders for Annual Council to note the Leader’s appointment of Council Champions as appropriate, to ensure there is no duplication with Cabinet portfolios</p> <p>3. To agree to the inclusion of the definition of a Council Champion in the Constitution</p> <p>Appointment to the Combined Authority Board</p> <p>4. Recommend to Full Council the clarification of the Constitution that the Leader of the Council will be the Council’s representative, <i>ex officio</i>, on the CPCA Board, by virtue of holding the office as Leader and that the Deputy Leader will, <i>ex officio</i>, be the substitute representative on the CPCA Board, by virtue of holding the office of deputy leader.</p>	

1. ORIGIN OF REPORT

1.1 This report is submitted to the Constitution and Ethics Committee following a request from the Committee Chair and as part of the Committee’s work programme.

2. PURPOSE AND REASON FOR REPORT

2.1 The purpose of this report is for the Constitution and Ethics Committee to review the current process for the appointment to outside bodies, to review the issue of Council Champions, who would represent the Council within certain fields that could be appointed at Annual Council if appropriate, and to clarify the Council’s appointment to the Board of the Cambridgeshire & Peterborough Combined Authority “CPCA”).

- 2.2 This report is for the Constitution and Ethics Committee to consider under its Terms of Reference No. 2.7.2.1

Authority to oversee the operation of the Council's Constitution and authority to make recommendations to Full Council as to amendments and improvements to the Council's Constitution (including the codes and protocols) subject to the receipt and consideration of a report prepared by the Monitoring Officer, with the exception of those matters under the remit of the Executive.

3. **TIMESCALES**

Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	N/A
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4. **BACKGROUND AND KEY ISSUES**

APPOINTMENTS TO OUTSIDE BODIES

- 4.1 The process for appointments to outside bodies (also known as external organisations) is set out in the Council's constitution at 'Part 3, Delegations Section 5 - Appointments to External Organisations'.

The current process is, in summary, the political proportionality for year is determined and set around to Group Secretaries. Each Group will then feedback to officers their proposals for their group seats.

If there are any disputes between groups in relation to which seats they want, then these disputed seats will be put to the Leader to determine. The Leader must take into consideration proportionality rules when making his determination.

It is local choice to have this decision rest with the Leader. Previous versions of this process have had this decision rest with Full Council. The Committee may wish to propose that the process remain as current with the Leader or amend the process to have Full Council make this decision at its Annual Meeting.

APPOINTMENTS TO COUNCIL CHAMPIONS

- 4.2 At its meeting on 15 August 2022 the committee agreed to look at what Council Champions could be proposed at Annual Council.
- 4.3 There are no restrictions on each political group from appointing within their groups a spokesperson or a group representative on certain issues. This is an informal arrangement that each group can carry out if it wishes.
- 4.4 Members are reminded that Cabinet Members cover a number of different portfolios and service areas within the Council and act as the representative for those areas when making decisions which affect the Council.
- 4.5 An example of a Council Champion is the Armed Forces Champion, which has been agreed in the past, which includes the role of being the point of contact for queries from ex-Forces personnel who need help and assistance, signposting people to relevant support and helping unblock any problems that people have accessing services. The purpose of the Committee looking at the issue of Council Champions is to formalise, as part of the appointments process at Annual Council, those Councillors who could be seen to champion a specific cause on behalf of the Council.

- 4.6 There may be other opportunities to appoint to Council Champions and this could include suggested champion roles around Trees & Woodland, Vulnerable People, Cost of Living, or Equalities. Group Leaders have been asked to forward any further areas that they may wish to see include as a Council Champion and this can be updated up to Annual Council.
- 4.7 It is important that Council notes the role of a Council Champion and that this has a defined description of the what the role will entail. Below is a suggested definition. Members can adjust the wording as necessary.

What are Member Champions?

Member Champions exist to provide a voice on the Council or to ensure particular issues are kept at the forefront of council business.

Member Champions are elected members who in addition to their other council responsibilities make sure that the issue or group that they are championing are taken into account and/or promoted.

What do they do?

Typically, the Member Champion will:

- Make sure that their area of interest is taken into account or promoted when liaising with the Executive, relevant Scrutiny Committees and key officers.
- Raise the profile of the area and make the authority aware of good practice.
- Engage with external bodies who work in the area
- Engage with other officers and members in relation to the role.
- Engage with community groups with an interest/stake in the area
- Report action to the Cabinet, relevant Scrutiny Committee or Full Council as appropriate.

- 4.8 If members agree to appoint a certain number of Council Champions, the constitution will need to be updated accordingly to outline how this was done. This will form part of the business meeting at Annual Council outlined in section 1.1.2 of the Council Standing Orders. A suggested inclusion is outlined below in red:

1.1.2 The Business Meeting

The Meeting will:

- i. approve the minutes of the last meeting;*
- ii. receive any announcements from the Mayor;*
- iii. consider urgent petitions in accordance with the Council's petition scheme;*
- iv. receive a report from the Returning Officer on the outcome of City Elections;*
- v. upon retirement of the previous Leader, which shall be at least once every four years, elect the Leader of the executive (the Cabinet)*
- vi. be notified by the Leader of the number of members to be appointed to the Cabinet, those Members' names and their intended portfolio of responsibilities; **Council Champions as appropriate including Armed Forces Champion, xxx***
- vii. appoint a licensing committee, a health and wellbeing board, at least one overview and scrutiny committee and such other committees as are required or the Council considers appropriate to deal with matters that are neither reserved to the Council nor are executive functions (as set out or will be set out in Part 3(2) of this Constitution). No member of the Executive will be allowed to be a member of a Scrutiny Committee or Commission;*

viii. receive the Leader's scheme of delegation of executive functions (as set out at Part 3(3) of this Constitution);

x. approve a programme of ordinary meetings of the Council for the year; and

xi. consider any business set out in the notice convening the meeting.

APPOINTMENT TO THE COMBINED AUTHORITY BOARD

4.9 The current process for appointment to the Combined Authority Board is for the appointment to be agreed at the Annual Council meeting, as per standing order 1.2.1:

"iv. receive nominations of councillors to serve on each committee and other authorities;

v. appoint to those committees, standing sub-committees and other authorities except where appointment to those bodies has been delegated by the Council or is exercisable only by the executive; and"

The Combined Authority's constitution states that:

"2. Constituent Councils

2.1. Each of the Constituent Councils shall appoint a Member (usually its Leader) to be a Member of the Combined Authority and another Member to act in the absence of the appointed Member (the Substitute Member). All appointments shall be for a one-year term."

Therefore, it is not a requirement of the Combined Authority that the representative of the Council be the Leader, however, it would be anticipated that this would be the case.

However, the current Peterborough City Council Executive Delegations sets out that the Leader shall:

"Be the Council's Lead Representative and member on the Cambridgeshire and Peterborough Combined Authority."

Reading all three of these together, it is clear that there is an apparent inconsistency in the Council's approach, or its anticipated approach, to the appointment of the Council Combined Authority Board representative. Therefore, it is proposed to amend the above referenced standing order and executive delegation, to clarify that the Leader of the Council will, *ex officio*, be the Council's appointment to the Combined Authority Board and the Deputy Leader, *ex officio*, be the substitute representative, for however long they hold those offices.

This appointment would be then presented to the Annual Council meeting for noting only.

The Annual Council meeting would retain authority to appoint representatives to the Combined Authority Audit and Governance Committee and the Overview and Scrutiny Committee.

The revised executive delegation would read:

"Be the Council's Lead Representative and member on the Cambridgeshire and Peterborough Combined Authority, ex officio, by virtue of holding the office of Leader of the Council."

Appoint the Substitute Representative Member on the Cambridgeshire and Peterborough Combined Authority, ex officio, by virtue of holding the office as Deputy Leader."

The revised standing order would read:

"iv. receive nominations of councillors to serve on each committee and other authorities;

v. appoint to those committees, standing sub-committees and other authorities except where appointment to those bodies has been delegated by the Council, or is exercisable only by the executive, or has been reserved to the executive; and”

5. CONSULTATION

- 5.1 Group Leaders have been consulted on any suggestions for Council Champions that they feel would be appropriate and could be recommended to be appointed at Annual Council each year.

6. ANTICIPATED OUTCOMES OR IMPACT

- 6.1 That the Council Constitution will be amended to formalise the appointments of any Council Champions and to clarify the appointment of the Council’s representative on the Combined Authority Board.

7. REASON FOR THE RECOMMENDATION

- 7.1 To formalise the process of appointing Council Champions if appropriate and to clarify the Constitution.

8. ALTERNATIVE OPTIONS CONSIDERED

- 8.1 That the constitution is not amended. There is currently nothing stopping groups from appointing a champion or spokesperson to represent their groups views on aspects for which the Council have a lead on.

9. IMPLICATIONS

Financial Implications

- 9.1 There are no financial implications arising from the report.

Legal Implications

- 9.2 If any recommendations are agreed this may involve updates to the Councils constitution.

Equalities Implications

- 9.3 There are none.

10. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

- 10.1 None.

11. APPENDICES

- 11.1 None.

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COUNCIL	AGENDA ITEM No. 9(e)
12 OCTOBER 2022	PUBLIC REPORT

EXECUTIVE AND COMMITTEE RECOMMENDATIONS TO COUNCIL

CIVIC PROTOCOL – DECLARATION BY MAYOR

The Constitution and Ethics Committee, at its meeting on 6 October 2022, received a report in relation to the Civic Protocol and the Declaration made by the Mayor.

Following debate, the Constitution and Ethics Committee considered that further work was required in relation to the item before them. As such, no recommendation was made to Full Council.

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COUNCIL	AGENDA ITEM No. 9(f)
12 OCTOBER 2022	PUBLIC REPORT

EXECUTIVE AND COMMITTEE RECOMMENDATIONS TO COUNCIL

AMENDMENTS TO THE CONTRACT RULES

The Constitution and Ethics Committee, at its meeting on 6 October 2022, received a report in relation to amendments to the Council's Contract Rules

IT IS RECOMMENDED that Council agree:

1. To amend the Contract Rules as set out in Appendix A to the report.

The original report and appendices are attached.

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CONSTITUTION AND ETHICS COMMITTEE	AGENDA ITEM No. 8
6 OCTOBER 2022	PUBLIC REPORT

Report of:	Fiona McMillan, Director of Law and Governance	
Cabinet Member(s) responsible:	Councillor Andy Coles, Cabinet Member for Finance and Corporate Governance	
Contact Officer(s):	Cecilie Booth, Corporate Director Resources, s151 Officer Patricia Phillipson, Deputy s151 Officer	Tel. 452520 Patricia.Phillipson@peterborough.gov.uk

AMENDMENTS TO THE CONTRACT RULES

RECOMMENDATIONS	
FROM: Fiona McMillan, Director of Law and Governance	Deadline date:
<p>It is recommended that Constitution and Ethics Committee:</p> <p>APPROVES the amendments to the Contract Rules as set out in Appendix A of this report and RECOMMENDS to Council for approval.</p>	

1. ORIGIN OF REPORT

1.1 This report is submitted to Constitution and Ethics Committee following referral from the Monitoring Officer, the Director of Law and Governance.

2. PURPOSE AND REASON FOR REPORT

2.1 The purpose of this report is to provide the Constitution and Ethics Committee the opportunity to review and approve amendments to the Contract Rules set out in Part 4, Section 10 of the Council's constitution, under the Committee's Terms of Reference at paragraph 2.7.2.1 of Part 3, Section 2 of the constitution.

3. TIMESCALES

Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	N/a.
Date for relevant Council meeting	7 December 2022	Date for submission to Government Dept. <i>(Please specify which Government Dept.)</i>	N/a.

4. BACKGROUND AND KEY ISSUES

4.1 Currently, the Council's Contract Rules require that, for contracts and procurements with a value of £5,000 or over, officers must carry out a form of competitive process by obtaining quotes from

potential suppliers. The precise competitive process required depends on the value involved. In circumstances where it is not possible to carry out a competitive process, the officer must obtain an exemption from this process and submit an exemption report for approval by the Corporate Director Resources in that regard.

- 4.2 The exemption report process involves the officer writing the report, obtaining approval from finance, legal and procurement and eventually from the Corporate Director Resources, and is therefore quite labour intensive, involving time spent by various officers. This process takes time and can create delays in putting the relevant contracts in place, and additionally removes responsibility and accountability away from budget holders, effectively transferring budgetary control to the Corporate Director Resources.
- 4.3 It is proposed that the Contract Rules be amended to change the £5,000 figure to £25,000, so that a competitive process is required for contracts and procurements with an estimated value of £25,000 or more, and those below that value can be awarded by obtaining just one quote. This change was proposed by the Corporate Director Resources and is supported by the Director of Law and Governance.
- 4.4 It is envisaged that this change will reduce the number of exemption reports and will also give budget holders more responsibility and ownership over the budgets they manage.
- 4.5 In addition to the proposed change detailed above, it is also proposed to delete some out of date contact details within the Contract Rules and make the following minor updates and changes simultaneously:
- a) Note that the valuation of contracts and procurements must now be inclusive of any VAT to reflect recent changes in law in this regard;
 - b) To update the EU thresholds stated in the Contract Rules to reflect the new levels contained within legislation;
 - c) To clarify that the exemption grounds for contract extensions also apply to contract renewals;
 - d) To delete the flowchart at the end of the Contract Rules which refers to out of date terminology and practices.
- 4.6 It is intended that, in due course, a full review and update of the Contract Rules will be carried out to coincide with the new procurement legislation that is expected to come into force in 2023. The current changes requested streamline the Council's processes for low value contracts in the interim, to seek to ensure efficiency.

5. CONSULTATION

- 5.1 There are no consultation requirements as the proposals are to make amendments to the Contract Rules.

6. ANTICIPATED OUTCOMES OR IMPACT

- 6.1 Following approval by the Constitution and Ethics Committee and subsequent approval by full Council on 7 December 2022, the Contract Rules will be amended, forming part of the Council's Constitution.

7. REASON FOR THE RECOMMENDATION

- 7.1 The reason for the changes is to ensure that budget holders take responsibility and manage their budgets. This will assist in the process when goods, services or works are purchased and avoid unnecessary delays and excessive officer time being spent in relation to reasonably low value contracts.

8. ALTERNATIVE OPTIONS CONSIDERED

- 8.1 Do Nothing/The Contract Rules are not amended: This was rejected, as the existing control process in authorising contract awards by exemption is not effective and requires changes for the reasons detailed above. The cost of purchases has increased in value over this period and there is a need to make amendments.

9. IMPLICATIONS

Financial Implications

- 9.1 None.

Legal Implications

- 9.2 Section 135 of the Local Government Act 1972 requires a local authority to make standing orders setting out its rules in relation to contracts made by it for the supply of goods or materials or for the execution of works, including securing competition in relation such contracts and regulating the manner in which tenders are to be invited.
- 9.3 Section 135 permits a local authority to specify that contracts below a price detailed in its standing orders, do not need to meet the requirement for competition. The proposed change to the Contract Rules will be altering the Council's price specified in this regard from £5,000 to £25,000.

Equalities Implications

- 9.4 None.

10. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

- 10.1 Contract Rules, Part 4, Section 10 of the Constitution.

11. APPENDICES

- 11.1 Appendix A – Revised Contract Rules, Clean copy
Appendix B – Revised Contract Rules with Tracked Changes

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Peterborough City Council

Contract Rules

Under Section 135, Local Government Act 1972

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Introduction to Contract Rules

These Contract Rules are made pursuant to the power under section 135 of the Local Government Act 1972 to make standing orders with respect to the making of contracts for or on behalf of the Authority, which is a power reserved to Council as a function that may not be exercised by the Cabinet (executive) by virtue of schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.

Where a decision to procure goods or services or the decision to award a contract is an executive (Cabinet) function, who may or may not make that decision and up to what financial limits is to be determined in accordance with the Leader's Scheme of Delegation in operation at that time. The Leader's Scheme of Delegation can be found at Section 3 (Executive Functions) of Part 3 (Delegations) of the Constitution

These Rules apply to contracts or agreements with external organisations where the Council pays for:

- goods and/or services;
- works of any kind;
- hire, rental or lease of equipment.

The Rules also apply to any contracts made using:

- framework agreements,
- Constructionline (the UK register of pre-qualified construction services), recognised pre-qualified lists (Select Credit),
- or any contracts to be awarded on behalf of schools which are part of the LEA.

For high value contracts, officers must comply with national and European legislation and guidance issued by the Cabinet Office, Crown Commercial Services which will **override** these Rules. You must seek advice from Legal Services and the Procurement Team about that process.

Which contracts are NOT covered?

These Rules do **not** apply to:

- Arrangements between different parts of the Council. Such arrangements are covered by service level agreements (**SLA**). For example, an agreement for Legal Services to provide legal advice to the Strategic Property team;
- Employment contracts between an individual and the Council;

Part 4, Section 10 – Contract Rules

- Buying or leasing land or buildings. These are covered by the Land Disposal Rules within the Financial Regulations;
- Grants of money. Grants cannot be contracts as they do not deliver services to the Council. Any grants of money must be in accordance with the Constitution and prior advice should be sought from Legal Services in relation to the governance process for award of grants and the legal documentation that will be required to be put in place. These Rules are not a guide to purchasing. These are the fundamental rules designed to ensure ethical processes around contracting.
- Certain collaborative arrangements between local authorities eg section 75 agreements.
- Public body to Public body co-operation - Contracts with other public bodies where the parties come together to deliver a public service, under the following conditions;
 - (i) achieve objectives which are common to both parties; and
 - (ii) the arrangement is solely for the public interest; and
 - (iii) the parties perform less than 20% of the services covered by the arrangement on the open market.
- In-house awards (this is where the Council awards a contract to an entity it controls. This exemption will only apply if **all** of the following conditions are met;
 - (i) The Council exercises a similar control on the entity as it does with it's own departments;
 - (ii) The entity carries out more that 80% of it's activities for the Council;
 - (iii) There is no private sector money in the entity.

Note that contracts for healthcare services covered by the NHS (Procurement, Patient Choice and Competition (No.2) (Regulations) 2013 will be governed by the Public Contracts Regulations 2006 until 18 April 2016, after which date the Public Contracts Regulations 2015 will apply.

Officer responsibilities

All officers must:

- Comply with the Council's Financial Regulations and, in particular, declare any conflicts of interest in a potential contract or with bidders;

Part 4, Section 10 – Contract Rules

- Declare any gifts or hospitality received either before, during or after the procurement;
- Report any gifts or hospitality which may have improper motive to the Internal Audit team;
- Not disclose any confidential information to unauthorised persons;
- Ensure they have authorisation for the contract from an appropriate officer or member;
- Conduct the procurement process in a open and transparent manner;
- Enter all consultancy and interim manager contracts and certain higher value (above £50,000), or high risk contracts onto the POWA management system;
- Ensure the Serco procurement team are engaged to support the process as necessary
- Achieve the best value for money achievable;
- Be fair to all bidders;
- Ensure that all equality issues are addressed (carrying out an equality impact assessment where required).

Chief Officer Responsibilities

The Constitution states:

“The Chief Executive, Directors and the Deputy Chief Executive are authorised to deal with contractual matters in accordance with the contract rules” (Part 3)

Therefore Directors must:

- Ensure that their Officers comply with these Rules and the Financial Regulations;
- Ensure their Officers inform the Serco Procurement team of all procurement exercises, including contracts awarded so that it can maintain an accurate and up-to date register of all Council contracts;
- Check that they have an appropriate authorisation, or have put in place an appropriate delegated authorisation, before any contract is awarded and commenced.

By following the Rules, officers will:

- ensure the Council’s procurement is legal;
- deter corruption;
- achieve value for money;

- show that the Council is accountable for its expenditure;

Advice and assistance

Officers can also contact the following people for advice and assistance:

Contracts and Procurement Team

Project Delivery

Legal Services

Israr Ahmed Tel: 452326

Alex Maxey Tel: 452325

Serco Procurement Team

buyingsupport@peterborough.gov.uk

1. [Richard McCarthy Tel : 384606](tel:384606)

Quick Reference Guide

VALUE (Including VAT)	PROCESS	EXEMPTION FROM RULES BY	DECISION TO AWARD	FORMALITIES	AUTHORITY TO SIGN OR SEAL CONTRACT	OTHER
Contracts under £25K	1 quotation	Exemption report signed by Corporate Director Resources	Contract award notice signed by relevant Director or CEX or their delegates	Purchase order (Financial system)	CEX or relevant Director (if written contact exists) or delegated authority	
Contracts between £25K & £50K	3 quotations For Contracts over £25,000, also place advert on Contracts Finder.	Exemption report signed by Corporate Director Resources in consultation with the Head of Legal Services	Contract award notice signed by relevant Director or CEX or their delegates	Purchase order (Financial system) and correspondence	Authorised signatory or relevant Director or delegated authority	Enter contract onto contract register
Contracts between £50K and EU threshold (£213,477 for goods and services or £5,336,937 for works or £663,540 for services falling under Sch 3 of the Public Contracts Regulations 2015)	Tender with 4 bidders For Contracts over £25,000, also place advert on Contracts Finder.	Exemption report signed by Corporate Director Resources in consultation with the Head of Legal Services	Contract award notice signed by relevant Director or CEX or their delegates	Formal contract approved by Legal Services	Authorised signatory (CEX or Corporate Director Resources or Head of Legal Services) or delegated authority All contracts over £100k are to be sealed under the Council's seal.	Seek advice on bonds or parent company guarantee Enter project on POWA Notify risks to risk register Written approval of Director and Head of Legal Services to terminate or assign

						Extension to be agreed by Director (if contract provides for extension) and subject to approval by Legal Services and Procurement.
<p>Contracts over EU threshold (£213,477 for goods and services, £5,336,937 for works or £663,540 for services falling under Sch 3 of the Public Contracts Regulations 2015)</p>	EU process (seek procurement and legal advice including advice on social improvements for services contracts)	<p>Only statutory exemptions from the EU process are permitted</p> <p>Officers cannot provide exemption from the statutory rules</p>	<p>Contract award notice signed by relevant Director or CEX or their delegates</p> <p>Key decisions must be on the Forward Plan at least 28 days in advance</p>	Formal contract approved by Legal Services	<p>Contract sealed</p> <p>Authorised signatory (CEX or Corporate Director Resources or Head of Legal Services) or delegated authority</p>	<p>Seek advice on bonds or parent company guarantee</p> <p>Enter project on POWA</p> <p>Notify risks to risk register</p> <p>Written approval of Director and Head of Legal Services to terminate or assign</p> <p>Extension agreed by Director (if contract provides for extension) and subject to approval by Legal Services and Procurement.</p>
<p>Contracts subject to EU process and over £500K (Applies to goods, services and works contracts over £500K)</p>	Apply the relevant process above	For goods and services: Only statutory exemptions from the EU process are permitted. Officers cannot provide an exemption	<p>Key Cabinet Member Decision Notice (CMDN) signed by the Cabinet member</p> <p>Decision on Forward Plan</p>	Formal contract approved by Solicitor to Council	<p>Contract sealed</p> <p>Authorised signatory (CEX or Corporate Director Resources or Head of Legal Services) or delegated authority</p>	<p>Seek advice on bonds or parent company guarantee</p> <p>Enter project on POWA</p> <p>Notify risks to risk register</p>

		For works contracts: The Executive Director, Resources can approve exemptions up to the EU threshold	at least 28 days in advance			Written approval of Cabinet member to terminate or assign Extension agreed by Director (if contract provides for extension) and subject to approval by Legal Services and Procurement.
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NOTE FIGURES ABOVE EU THRESHOLDS ARE SUBJECT TO CHANGE AND YOU SHOULD CHECK WITH LEGAL SERVICES AND SERCO PROCUREMENT

Section 1 – Beginning the Process

Before beginning any purchase you have to go through each of the steps in this section. It will help you determine how to apply the remainder of these rules.

Before contracting

Before any purchase you must take the following essential steps to ensure that you are getting best value for the Council:

- Calculate the total contract value
- Consider whether any corporate contracts ought to be used
- Research the market
- Discuss with the Serco procurement team
- Consider what other advice/assistance you may need:
 - Does the contract involve land or buildings e.g. is a lease or licence required? If so, contact the *Estates* team and finance team;
 - Are any employees affected by the contract? If so, contact *Human Resources & Legal Services*;
 - Is equipment, plant or machinery to be transferred under the contract? If so, consider *Financial Regulations and seek advice from finance team*;
 - Is there any issue of state aid? If so, contact *Legal Services*;
 - Who has the correct delegated authority to authorise the contract? Contact *Legal Services* if in doubt;
 - Are there any equality issues within the contract, are there any requirements that need to be considered under the Public Sector Equality Duty, is an equality impact assessment required? If assistance is required, contact *Legal Services*;
 - Contract value issue?
 - Is the contract really a SLA or a Grant Agreement? If assistance is required, contact *Legal Services*;

Does the contract involve services above the EU threshold? If so, consider what social improvements might be secured and if consultation is required (under the Public Services (Social Value) Act 2012. Contact *Legal Services* if in doubt;

- Prepare a Business Case (POWA) for any contract using consultants or interim managers of any value or other contracts above £50K

Calculate the total contract value

The contract value determines the process you must follow under these Rules. The valuation must be inclusive of any VAT payable.

You can calculate the total estimated value of the contract according to a simple formula

$$\text{Annual value} \times (\text{number of years} + \text{extension period}) = \text{total value}$$

The calculation may be subject to the following variances:

- where the contract is for a fixed period, the value is the total price to be paid or which might be paid during the whole of the contract period, including any possible extensions to the contract period;
- where a number of goods or services contracts are to be entered into, the estimated value of each contract shall be the total value of the payment which the Council expects to pay under each of those contracts;
- where a number of works contracts are to be entered into, the estimated value for carrying out the works shall be total value of the payment which the Council expects to give under all the contracts for carrying out the works;
- where the contract is for services has been provided over an indefinite period the value is obtained by multiplying the monthly payment under the contract by 48;
- where a service contract includes one or more options the estimated value of the contract shall be determined by calculating the highest possible payment which could be given under the contract;
- where the contract is a single contract comprising services, supplies or works in combination, the value is calculated according to the price of the largest element of the contract.

Some contracts may not be for a cash value. Where this is the case please contact Legal Services who will assist you in calculating the contract value.

You should not enter into a series of separate lower value contracts with the intention of avoiding these Contract Rules.

Prepare a business case or mandate

The POWA system has been designed by the Council to monitor projects undertaken by the Council or using Council budgets. You must use POWA if it involves;

- Any purchasing as part of a project which is outside of 'business as usual'.
- Any use of a consultant or interim manager.
- Any purchase over £50,000 in value.
- Any contract carrying high risk.

There are no strict financial limits around the requirement to enter a project on POWA but it is considered best practice for officers to make more comprehensive use of the POWA system.

Information and guidance on POWA can be found on Insite.

Please see the 'Consultant and interim's Policy' on Insite for further information on the use of consultants and interim managers.

Corporate contracts

The Council has entered into a number of partnership arrangements for either;

- direct delivery of internal services (e.g. IT with Serco);
- direct delivery of its services to the public e.g. the refuse collection service provided by Enterprise, leisure and cultural services provided by Vivacity), or
- centralised procurement of other bought in services (e.g. travel and hotel bookings, agency staff etc.).

These contracts create an exclusive arrangement between the Council and our partners for the services those partners provide. This means that you are obliged to use these service providers for the services they deliver. These are referred to throughout these Rules as the corporate contracts.

For all other services which fall outside of those contracts you have to tender any purchasing on the open market. You must also invite our partner to tender for the goods, services or works if they have the ability to provide those services but, within that tendering process, they are treated the same as any other bidder.

Failure to use the corporate contracts may result in the Council being in breach of contract and is likely to incur financial penalties for the Council.

Please contact the Serco Procurement team for advice on our corporate contracts.

Contracts reserved for mutuals

You can limit competition for services such as administrative services in relation to education, healthcare and housing, health and social work services, library and other cultural services to

mutual type organisations. For such contracts the maximum duration is three years. A mutual type organisation must meet all of the following requirements;

1. The organisation's objective must be the pursuit of a public service mission linked to the services set out in the Public Contracts Regulations 2015;
2. The profits of the organisation must be re-invested to achieve the mission;
3. The organisation must be employee owned or require active employee organisation;
4. The organisation must not have been awarded a contract under this process within the last three years.

Contact the Legal Services Team, Serco Procurement Team and Finance Team if you wish to undertake such a process.

Research the market

Researching the market is an important tool in identifying potential cost savings to the Council. The Serco Procurement Team can assist you to identify where you can add value to your tendering process by undertaking proper market research.

You are permitted to consult potential suppliers prior to starting your purchase in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters provided you do not:

- prejudice any potential bidder; or
- favour any potential bidder so as to distort competition.

Where the Council has invited a potential bidder to take part in preliminary discussions then the outcome of any such discussions must be shared with all bidders participating in the procurement process.

You may also seek or accept advice from individual experts/bidders and use the advice in your planning for the procurement process. Ensure that you act fairly with all bidders and do not favour one bidder over the other, also keep a record of all measures taken.

The Serco Procurement Team can assist you with carrying out effective market research.

Framework agreements or local market tendering

The Council's Procurement Strategy will determine whether you should seek to achieve cost efficiencies through use of framework agreements or whether you should tender in smaller lots as

a way to encourage bids from small to medium enterprises (SME's), in particular to target and stimulate local business.

There are numerous framework agreements for pre-tendered goods and services. There is generally no requirement to use a framework agreement but best value is often achieved by procuring through a framework agreement.

Use of a framework agreement may require you to engage in a mini-competition. This will be determined by the terms and conditions relating to the framework.

The Procurement Team can advise you on the various framework agreements available and provide advice on how to structure your tender to take advantage of the competition.

In some cases it may be preferable to tender the contract in smaller lots to allow local businesses the opportunity to tender for the work. Whilst smaller contracts may encourage local businesses to tender, you cannot limit the tendering process to local businesses alone as this would be to breach the requirement to be fair in your tendering process.

Other considerations

Please do consider each of the following before beginning any tendering exercise.

The need for the purchase

- Is the cost of purchasing outweighed by the benefits received?
- Have you considered other alternatives to your purchase or whether you might co-purchase with other Council Departments and so achieve further economies of scale?
- Are there products or skills within the Council that can be used without the need to source these externally?

Risks arising

- Consider any risks associated with the purchase and how they are to be managed. Is this something that needs to be addressed on the departmental risk register?
- Have you factored in critical support and maintenance arrangements (i.e. whole life costing) if appropriate to avoid later negotiations? This is particularly important if your purchase involves any land or buildings.
- Have you identified whether there will be any potential conflicts of interest arising in the conduct of the procurement process, which can be seen as unfair and distorting competition?. You need to; (i) identify whether any staff member or other person involved in the procurement process on behalf of the Council has any direct/indirect/financial/personal interest which could be seen as comprising the impartiality and independence of the procurement process;(ii) ensure that the person has no further involvement in the procurement process if there is a potential conflict of interest; and (iii) Complete the conflict of interest form provided by the Procurement Team and ensure it is kept up to date.

Process

- Make sure you have selected the most suitable procurement method for the purchase e.g.
- Through the use of a corporate contract;
- sourcing through a framework; or
- partnering and collaborative arrangements with other local authorities or public bodies;
- Note you cannot use a Pre-Qualification Questionnaire stage in the selection of bidders, refer to Section 2 of the rules for guidance. It is important to note that you can only ask suitability assessment questions and must give full regard to the guidance from the Cabinet in relation to such suitability questions. Contact the Procurement Team for assistance.

Governance

- Do you have the available budget?
- Do you have the appropriate approval for the expenditure in line with the Constitution?
- If the purchase requires a Cabinet Member decision, consider whether it is a key decision and has to be included on the Forward Plan in line with the Council's Constitution;
- Have you notified the Procurement Team if the total value of the contract is above the relevant EU threshold?
- Have you involved Serco procurement team in progressing the procurement process to ensure value for money is being achieved if not using a corporate contract or framework contract?

Key practical points

- Factor into your timetable sufficient time to prepare the tender documents especially the evaluation criteria in advance of beginning the tendering process.
- Consider the essential elements of your contract and ensure that these are included in your conditions of contract.
- Ensure that your contract budgets for the whole life costs of the contract.

Section 2 – Process according to Value

Part A: Contracts below £25,000

This section sets out the requirements that officers must follow when purchasing works, goods or services where the total value of the contract is below £25,000.

Getting a quote

1. For contracts for works, goods, or services with an estimated value below £25,000, you must either:
 - obtain a quote under one of the Council’s corporate contracts, or
 - place an order with a contractor under a framework agreement, or
 - obtain a quote from other relevant suppliers
2. Officers should note that they are required to obtain a quote from a corporate contract where one exists for the supply of those services.

Formalities

3. There must be a written record of the quotation, which may be in the form of a letter or email to or from the contractor.
4. You should consider the following information as essential to include in any quote:
 - the specification of the goods, services or works to be supplied;
 - payment provisions in line with Financial Regulations;
 - the Council’s termination rights;
 - the key time or times when the contract is to be performed;
5. You must have a purchase order in line with Financial Regulations. This may require you to set up the supplier on the Council’s accounting system in accordance with Financial Regulations.
6. The decision to award the contract and any written terms must be agreed in writing by your Director (or the Chief Executive) unless they have delegated that authority to you or another senior officer within your team.

Part B: Contracts between £25,000 and £50,000

This section sets out the requirements that officers must follow when purchasing works, goods or services where the total value of the contract is between £25,000 and £50,000.

Obtaining quotations

1. In the case of contracts for works, goods or services with an estimated value between £25,000 but not exceeding £50,000 you must first consider:
 - Whether you must procure those services through an existing corporate contract,
 - Whether a corporate contract can supply those services, or
 - Whether you have to source those services on the open market.
2. If a corporate contractor does supply those services or can procure those services on our behalf, you must instruct them directly. If you do not wish to make use of a corporate contract you will need to complete an exemption report (see section 4) prior to tendering to obtain the authority of the Executive Director, Resources not to do so.
3. If you are sourcing those services on the open market, you must obtain at least 3 written quotes and select the provider that offers the best value for money. You should consider whether to ask for assistance from the Procurement Team even for such low value contracts as they may be aware of ways in which you can maximise resources to achieve best value.
4. If 3 quotes cannot be obtained due to lack of suitable contractors, the Officer must complete an exemption report prior to awarding any contract. This is to obtain authority to be exempted from this Rule. For further information please see Section 4 of these Rules.

Advertising the Contract

5. Although there is no specific requirement to advertise a contract between these values, officers and our corporate partners are positively encouraged to advertise contracts where
 - the contract value is £25,000 or above;
 - competition in the market is strong, or
 - the number of potential suppliers is high.
6. Advertisements can be placed on the Council's website, in the trade press and on websites specifically set up for contract advertisements .
For contracts estimated to be £25,000 or over and which have been advertised, you must ensure that within 24 hours the advertisement relating to the contract opportunity is also advertised on Contracts Finder. This requirement will not apply where a framework has been set up of pre-selected suppliers and you intend to choose suppliers from the framework. The following details must be included in the advert on Contracts Finder;

- Date and time by which an interested supplier must respond if it wishes to be considered for the contract opportunity;
- How and to whom the supplier must respond;
- Any other requirements for participating in the procurement;
- Internet address where the documents can be accessed from.

You must ensure that unrestricted, free and full direct internet access is given to the documents relating to the procurement. You must also have regard to any guidance issued by the Cabinet Office in relation to the form and manner in which the information is to be published on Contracts Finder.

The Procurement Team can provide assistance with advertising.

Framework agreements

7. Where a suitable framework agreement exists you may use the framework if the Council is mentioned as a potential purchaser under the framework agreement. You must follow the procedure set out in the framework agreement and do not have to obtain 3 quotations. The Procurement Team can assist you in selecting an appropriate framework agreement and advise you on the process for obtaining quotes.

Known suppliers

8. In some cases you may already be aware of suppliers possessing a particular type of goods or service or works expertise that you are seeking. You may seek 3 quotations from any suppliers known to you but you must ensure that:
 - you do not use these suppliers in preference to any corporate contracts;
 - you do not discriminate in your selection of any particular supplier.

Invitations to Quote

9. Although quotations do not require a formal process you must ensure that your request for quotes is made in writing and must set out a simple specification for your purchase. You should also state the basis upon which you will select the successful quote.
10. You must have a purchase order in line with Financial Regulations once you have selected the successful quotation.
11. If you select any supplier who is not the cheapest quote, you must record your reasons for

selection in writing.

Higher value quotations

12. Where the value of the contract is between £45,000 and £50,000 Officers are encouraged to pursue a more formal quotation process. Officers not following a formal quotation process must record their reasons in writing. Officers should consider drafting an Invitation to Quote comprising of the following:
 - Bidders information about the process being used;
 - Specification of the goods, services or works being purchased;
 - Award criteria and procedure;
 - Tendering and canvassing certificate;
 - Contract terms and conditions.
13. The Invitation to Quotation must state that:
 - the Council is not bound to accept a quotation and;
 - late submissions or submissions which do not comply with the Council's award procedure will be rejected.
14. The Invitation to Quotation must include the contract terms and conditions that will apply to the contract setting out:
 - details of the goods, services or works to be supplied;
 - payment provisions;
 - the Council's rights to terminate the contract;
 - the key time or times when the contract is to be performed;
15. The Officer must consult Legal Services before an Invitation to Quotation is issued where the purchase involves one or more of the following:
 - the transfer of non-land assets.
 - the transfer of staff.
 - the transfer or lease of land.
 - potential state aid issues.
16. Your Director can award a contract up to £500,000 in value upon receipt of a contract award report. The contract award report must be completed and submitted to your Director (or delegated officer) for approval. The signed award report must be kept by the department for future reference.

17. You must publish a contract award notice on Contracts Finder within a reasonable time once you have awarded a contract, which must contain the following details;
- Name of the supplier;
 - Date of contract;
 - Total contract value;
 - Whether the supplier is a SME (small, medium size enterprise);
 - Whether the supplier is a non-governmental organisation that is value driven and surplus Monies are re-invested to further social, environmental or cultural objectives.

Information does not have to be published where the release would be contrary to the public interest, impede law enforcement, prejudice the legitimate commercial interests of a particular economic operator, might prejudice fair competition between suppliers.

You must also have regard to any guidance issued by the Cabinet Office relating to the form in which such information is to be published.

18. The contract can be signed by the relevant Director.

Part C: E-tendering

1. Electronic Procurement (e-procurement) is the use of an electronic system to advertise and invite tenders for goods, works and services.
2. E-procurement covers the whole purchasing cycle. This is also known as the 'purchase-to-pay' cycle and includes:
 - electronic requisitioning,
 - electronic tendering,
 - electronic ordering,
 - purchasing cards and
 - electronic Payment/Invoicing.
3. The e-tendering system must be used for any purchase of goods, works or services above £50,000, however officers are encouraged to use the system for contracts below £50,000 where possible. Where contracts are advertised in OJEU, all tender documents must be made available electronically. This means that from the date the OJEU notice is published, you must ensure that all specifications, the descriptive document, proposed conditions of contract and any other documentation are ready for interested suppliers.
4. To use the e-procurement system you should contact the Procurement Team to register yourself as a user on the e-sourcing system. Training and user guides will be provided.
5. The following sections of these Rules anticipate that you will use the e-procurement system for any purchasing. If you do not wish to use the e-procurement system you will need to discuss this with the Procurement Team.

Part D: Contracts between £50,000 and EU values

Contracts in this range of values are subject to the Council's tendering procedures as set out in this section. E-procurement is the preferred method of tendering and use of framework agreements is likely to be more common. You are therefore very likely to need assistance from the Procurement Team throughout this process and an early request for assistance is recommended.

Prior considerations

1. In the case of contracts for works, goods or services with an estimated value between £50,000 to the EU threshold you must first consider:
 - Whether you must procure those services through a corporate contract, or
 - Even though procurement through the corporate contract is not necessary, whether a corporate contract can supply those services, or
 - Whether you have to source those services on the open market, or
 - Whether you want to call off those services from a framework agreement.
2. If a corporate contractor can supply or procure those services, you must instruct them directly. Where they are procuring works, goods or services on your behalf they must follow these tendering procedures. If you do not wish to procure through the corporate contract you will be required to complete an exemption report (see section 4) before placing any orders for goods, services or works.
3. If you are sourcing those services on the open market, you must tender for a supplier using the e-procurement system.
4. Where there is a lack of suitable contractors on the market to merit a tendering process, you must complete an exemption report. This is to obtain authority to be exempted from this Rule. For further information please see Section 4 of these Rules.

Using a framework agreement

5. A framework agreement comprises pre-assessed suppliers. Use of a framework therefore simplifies the tendering process and offers considerable cost reduction. Before opting to use a framework agreement you should also consider whether there is benefit in re-packaging the tender to enable local businesses to compete for the contract.
6. A framework agreement will be suitable where you are contracting for services, goods or works
 - commonly available
 - frequently used

7. A framework agreement may not be suitable for your supply where it involves:
 - particularly complex or risky procurements;
 - one-off procurements where the product or service requires a specialism;
 - procurements which are looking for particularly novel solutions;
 - where the contract length would be longer than four years;
8. Before using any framework agreement please ensure that the Council was identified as a potential purchaser in the OJEU notice. Advice on this can be sought from the Procurement Team or Legal Services.

Awarding a call-off

9. Once you decide on a framework agreement you must call off your individual contract under the framework either by:
 - placing a direct order/direct award or
 - holding a mini competition
10. The method of call-off will depend on the terms and conditions of the framework. Some larger frameworks are divided into a number of lots, which may have been set up to enable direct ordering whilst others are designed to provide more bespoke solutions with the terms, conditions and solutions being refined through mini competition.
11. You cannot make any substantive changes to the specification or the terms and conditions of the framework so you must follow its terms in order to procure under the framework.

Tendering process

12. Officers who have assessed that they do not want to award through a framework agreement are required to carry out a formal tendering process. The Council's preferred method is e-procurement. Note you cannot use a Pre-qualification Questionnaire for contracts within the values mentioned in this section. See Section 1, Other Considerations, Process.

Advertising

13. You are required to advertise any contract you wish to tender whose total value is £25,000 or above.
14. You must ensure an appropriate level of advertising having regard to:
 - The subject matter of the contract;
 - The value of the contract;

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- The size and structure of the market and common commercial practices in that market;
 - The location where the goods or services will be delivered.
15. The greater the interest of the contract to potential bidders, the wider should be the coverage of the advertisement. Depending on the above criteria, advertisements could be placed on the Council's website, in the trade or local press, on websites specifically set up for contract advertisements or, where the contract borders on the EU threshold, in the Official Journal of the European Union (OJEU).

For contracts estimated to be £25,000 or over and which have been advertised, you must ensure that within 24 hours the advertisement relating to the contract opportunity is also advertised on Contracts Finder. This requirement will not apply where a framework has been set up of pre-selected suppliers and you intend to choose suppliers from the framework. The following details must be included in the advert on Contracts Finder;

- Date and time by which an interested supplier must respond if it wishes to be considered for the contract opportunity;
- How and to whom the supplier must respond;
- Any other requirements for participating in the procurement;
- Internet address where the documents can be accessed from.

You must ensure that unrestricted, free and full direct internet access is given to the documents relating to the procurement. You must also have regard to any guidance issued by the Cabinet Office in relation to the form and manner in which the information is to be published on Contracts Finder.

Preparing the tender documents

16. To complete the tender process you must prepare the following documents:
- An Invitation to Tender including the evaluation criteria;
 - Specification of goods, services or works to be supplied;
 - A tendering and canvassing certificate;
 - Parent company guarantee or performance bond (where appropriate);
 - Standard conditions of contract. You must include provisions stipulating that the Council will pay the supplier no later than 30 days from date of the invoice. You may also include further specific conditions relating to the performance of the contract ie economic, innovation-related, environmental, social or employment related conditions. These conditions must be linked to the subject matter of the contract and set out within the tender documents. Contact Legal Services for advice and preparation of these clauses.

Preparing the evaluation criteria

17. Before starting the tender process, you must define the evaluation criteria. This details how the bids will be evaluated. It is essential that the methodology for the award is set out in the Invitation to Tender.
18. You must apply the relevant British and any equivalent European or international standards to define the required quality of the goods or services being purchased.
19. The evaluation criteria must be relevant to the services, goods or works being purchased and must be designed to secure value for money for the Council.
20. The evaluation criteria for award of the contract must be based on:
 - the most economically advantageous (MEAT) bid (in other words, where quality, performance or improvements are as important as price); or
 - the lowest price (where price is the only factor).

You can also use a cost-effective approach for the evaluation criteria ie considering environmental and social aspects, qualifications and experience of staff, after sales service, delivery conditions, quality impacting on level of contract performance. These must be linked to the subject matter of the contract.

21. If the most economically advantageous criteria are to be used, they can be further defined by relevant sub-criteria, examples of which are set out as follows:
 - price;
 - quality and performance;
 - running costs;
 - technical merit;
 - economic advantage based on past experience;
 - delivery date;
 - environmental considerations;
 - aesthetic and functional characteristics;
 - safety;
 - after-sales services;
 - technical assistance; and
 - other relevant matters.

22. Where sub-criteria are used, they must also be set out in the Invitation to Tender.

23. The evaluation criteria must not include non-commercial considerations. These are criteria which are not directly relevant to the operation of the contract e.g. the terms and conditions of employment of the bidders' workers or the country of origin of the bidder.
24. The award criteria cannot include matters which discriminate against suppliers from the European Union or signatories to the Government Procurement Agreement.
25. As the evaluation stage is the most likely point at which a challenge may be made to the procurement process you are advised to seek assistance from the Procurement Team regarding evaluation modelling.

Defining the evaluation procedure

26. Bids can be evaluated by using the bidders' written submissions only or you may want to arrange face to face interviews with the bidders and/or ask for bidder presentations to supplement the written submissions.
27. You must choose which process you will use to evaluate the bids and set this out in the Invitation to Tender.

Preparing the invitation to tender

28. The Invitation to Tender sets out the basic rules for the tendering process and you must use the standard template Invitation.
29. The invitation to tender must state that
 - the Council is not bound to accept the tender;
 - late submissions and submissions which do not comply with the Council's e-tendering procedure will be rejected;
 - the e-tendering system does not allow acceptance of tenders via email or post;
 - the date and time for submission of tender and that late tenders may not be accepted;
 - the tender submission closing time is governed by the e-tendering system's clock which automatically records receipt of tenders and retains that information;
 - Where bidders are asked to upload files, you must advise them that single file sizes must not exceed 5mb.
30. The invitation to tender should be accompanied by standard conditions of contract. You need to consider whether there are further conditions relevant to the contract e.g. the time the service is performed, the date on which goods are delivered etc. In some cases standard contracts (e.g. JCT contracts) will be available.
31. Officers must consult Legal Services before a tender is issued for any contract which involves one of the following:
 - the transfer of non-land assets;

- the transfer of staff;
- the transfer or lease of land;
- any form of payment assistance to the bidder (state aid).

Clarification procedures

32. All clarification and communication during the tender process should be channelled through the e-tendering systems messaging tool. Never email bidders via your email account during the tender exercise as there is no clear audit trail to support your process. When a message is received from a bidder a notification will be emailed to you to respond to the message. Any queries raised by a bidder and clarifications provided should be forwarded to all bidders with anonymity of the bidder raising the query.
33. If an error is identified in the invitation to tender before the closing date for submissions and is significant enough to warrant amendment, all bidders should be informed of the error and invited to adjust their bids.

Submission, receipt and opening of tenders

34. Tenders will only be available to evaluate following the closing date for submissions .
35. Tender evaluation may be completed within the e-tendering system on line or off line.

Post tender negotiation

36. If an error is identified in the invitation to tender after the closing date for submissions and is significant enough to warrant amendment, all bidders should be given details of the error and given the opportunity to withdraw their offer or to submit a revised bid within a defined period.
37. Where there is a minor error or discrepancy in the successful tender which would affect the tender figure, the bidder should be given details of the error or discrepancy and given the opportunity to confirm, correct or withdraw its bid. If the bidder withdraws its offer, the next most competitive bid should be assessed.
38. Following receipt of the tenders, you may clarify or negotiate with a preferred bidder to obtain an improvement in terms of price, delivery or service. Any such clarification or negotiation must:
 - not discriminate against other bidders, and
 - not alter the original specification except where Legal Services or Procurement have advised that special circumstances exist that can be substantiated, and

- have the prior authorisation of Legal Services or the Procurement Team, and
- be confirmed in writing by the bidder.

Evaluation, selection and de-briefing

39. The e-tendering system may be used as a document exchange system where tenders are uploaded to the system and then evaluated off-line or you may use the systems tender questionnaire which will enable you to evaluate the bids online within the e-tendering system.
40. Bids must be evaluated and the successful bidder selected in line with the advertised award criteria and the award procedure.
41. There is no requirement for a standstill period in non-EU tendering but it is considered good practice to debrief unsuccessful bidders before awarding the contract to identify and avoid any potential challenges from an unsuccessful bidder.
42. You may want to include the following matters in any debrief:
 - identifying the bidder to whom the contract will be awarded,
 - the reasons for the decision,
 - the award criteria,
 - a full breakdown of the bidder's scores against each of the criteria and sub-criteria together with an explanation why the successful bidder achieved a higher score,
 - the score of the successful bidder,
 - the reasons (if any) why the bidder did not meet the technical specifications.
43. Apart from the debriefing permitted by this Rule, the confidentiality of tenders and the identity of bidders must be preserved at all times and information about one bidder's response must not be given to another bidder.

Award report

44. Provided there is no challenge to the decision to award the contract you must prepare a contract award report to authorise the award of the contract which must be sent to Legal Services, Procurement and Finance for approval before your Director signs off the report. The report must be signed by the Director or a senior officer with authority delegated from the Director.
45. Once your contract award notice has been approved, you will need to notify all bidders of the result via the e-tendering system. In addition, you must also publish a contract award notice on Contracts Finder within a reasonable time once you have awarded a contract, which must contain the following details;

- Name of the supplier;
- Date of contract;
- Total contract value;
- Whether the supplier is a SME (small, medium size enterprise);
- Whether the supplier is a non-governmental organisation that is value driven and surplus Monies are re-invested to further social, environmental or cultural objectives.

Information does not have to be published where the release would be contrary to the public interest, impede law enforcement, prejudice the legitimate commercial interests of a particular economic operator, might prejudice fair competition between suppliers.

You must also have regard to any guidance issued by the Cabinet Office relating to the form in which such information is to be published.

Contract formalities

46. There must be a signed written contract in place between the Council and the contractor before the supply, service or work is started. You must send the following documents to Legal Services to prepare and finalise the formal contract documents:
- Signed Director's Contract Award Report;
 - Invitation to Tender (including the terms and conditions);
 - Successful Contractor/Service Provider/Consultant tender submission;
 - Any other documents you wish to include in the contract
47. Signed, Sealed contracts will be listed in the Council's contract register and placed in the Council's Deeds Room and you will be forwarded a contract number for future reference. Contracts between £50,000 and £100,000 need to be signed by an Authorised Signatory or sealed in the presence of an Authorised Signatory. All contracts over £100,000 must be sealed in the presence of an Authorised Signatory.
48. If you want the contract to begin before the contract is signed or sealed, you should consult Legal Services. In exceptional circumstances, the Head of Legal Services may permit the contract to begin before the contract is signed.

Contract register

49. You must give details of the contract to the Procurement Team to be entered into the Contracts Register.

Part E: Contracts above EU values

If you want to award a contract in this range of values you must consult the Procurement Team and Legal Services. This process is governed by statutory rules and European Directives that are too extensive to set out in these Rules. The following Part is intended as summary guidance only.

It is important to note that the statutory rules supersede these Rules and contain their own exemptions.

No exemption can be granted by officers or members for exemption from the EU process unless the exemption is permitted by the statutory rules.

Identifying potential candidates

1. Contracts which are covered by the Regulations must be the subject of a 'call for competition' by publishing a contract notice in the Official Journal of the European Union ("OJEU").
2. In most cases the time allowed for responses or tenders must be no less than a set period, although some prescribed periods can be reduced where:
 - A prior information notice (PIN) was published sufficiently far in advance of the procurement or when accelerated procedures are used;
 - If the OJEU notice was submitted electronically in accordance with the requirements set out on the SIMAP website (see above);
 - Where authorities offer full and unrestricted access to tender documents (in accordance with specific requirements set out in the EU procurement regulations).

Process

3. **The Public Contracts Regulations 2015 (which can be viewed on the Cabinet Office website) set out schedules which include the types of works, services that are covered by the Regulations. These Regulations will apply in the following circumstances;**

(i) For a contract relating to works with a total value of £5,336,937 and over;

(ii) For a contract relating to the supply of goods with a total value of £213,477 and over;

(iii) For a contract relating to services with a total value of £213,477 and over. However for services falling within Schedule 3 of the Regulations, the Regulations will apply where the total contract value is £663,540 and over.

Important to note that the thresholds stated are subject to changes on an two yearly basis, you must check with Legal Services and the Procurement Team in relation to under which services your proposed contract falls under.

Where the contract value of your contract is below the thresholds, this does not mean that you will be totally exempt from the Regulations, contact the Legal Services and Procurement Team for assistance.

4. **For contracts which are above the thresholds set out in this section, a standardised Pre-Qualification Questionnaire may be used when shortlisting potential bidders and/or assessing their financial and economic standing, technical capacity and ability, previous experience. Contact the Procurement Team or Legal Services for further advice on PQQ's.**

Choice of procurement procedure

5. Four award procedures are provided for under the EU procurement regulations:
- **Open Procedure**
All those interested may respond to the advertisement in the OJEU by tendering for the contract.
 - **Restricted Procedure**
A selection is made by use of a pre-qualification questionnaire (PQQ) of those who respond to the advertisement and only those selected are invited to submit a tender for the contract. This allows purchasers to avoid having to deal with an overwhelmingly large number of tenders.
 - **Competitive Dialogue Procedure**
Following an OJEU notice and a selection process, the Council enters into dialogue meetings with several bidders, to develop one or more suitable solutions for its requirements. During this process bidders are deselected at various stages before final tenders are called for. (A multi-stage and complex process which should not be used where Open or Restricted procedures could have been used).
 - **Negotiated Procedure**
The Council may select one or more persons with whom to negotiate the terms of the contract. An advertisement in the OJEU is usually required but, in certain circumstances, described in the Regulations, the contract does not have to be advertised in the OJEU. An example is when, for technical or artistic reasons or because of the protection of exclusive rights, only a particular person can carry out the contract. This procedure is used only exceptionally.
 - **Innovation Procedure**
This procedure can be used where the Council has identified a need for an innovative product, service or works that cannot be met by purchasing these from the market. A partnership can be set up with one or more partners with the aim of developing an innovative product, services or works. The partnership will need to be terminated as the development progresses. The selection of bidders and process for negotiation will be in accordance with the Public Contracts Regulations.

6. Public authorities have a free choice between the open and restricted procedures. The competitive dialogue procedure is available where the contract cannot be awarded under open or restricted procedure. The negotiated procedure may only be used in the limited circumstances described in the EU procurement regulations.
7. Under restricted procedures, competitive dialogue and competitive negotiated procedures (those where a call for competition is required by advertising in the OJEU) there must be a sufficient number of participants in the process to ensure genuine competition, with a minimum of *five* for restricted procedures and *three* for competitive dialogue and negotiated procedures.

Specification evaluation and award criteria

8. In all other respects the process follows the steps set out in the earlier section on tendering and you are required to complete preparation of your paperwork before the tendering process begins. Whilst some of the paperwork can be standardised it is important that Legal Services and the Procurement Team will work with you to devise award criteria based upon your specification for the services that are being procured.

Where tender bids received appear to be abnormally low, you need to seek an explanation from the bidder or bidders. Once received you need to assess the information and you can only reject the tender where the responses provided do not satisfactorily set out the reasons for the low bid. Contact Legal Services for guidance.

Standstill and post tender formalities

9. Following the evaluation of the contract and before formally awarding the contract to the successful bidder there will be a mandatory standstill period. This period begins once you have notified the unsuccessful bidders of your decision and the reasons for the differing scores. This is known as the 'Alcatel' or "Standstill" period and is bound by strict rules. See points 11 and 13 below as to when the Alcatel letter must be sent out.
10. The standstill period allows for the unsuccessful bidders to seek any feedback on their bids and to challenge the procurement process. You should therefore have prepared in advance any information about the evaluation process, the reasons for the differing scores and why the bidder was unsuccessful before the award of the contract is notified to the bidders.

Governance

11. The contract must be awarded by an authorised signatory on behalf of the Council. Your Director can award a contract up to £500,000 in value upon receipt of a contract award report. You must prepare an award report to authorise the award of the contract which must be sent to Legal Services, Procurement and Finance for approval before your Director signs off the report. The report must be signed by the Director or a senior officer with authority

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delegated from the Director. The Alcatel letter can be sent out at any time after your Director signs off the contract award report.

12. For contracts above £500,000 you will need to have a Key cabinet member decision notice (CMDN) approved by the relevant Cabinet member before award of the contract. All contracts of this value should also be on the Forward Plan. Contact the Governance team for further guidance.
13. The Key CMDN must be published in advance of being signed by the Cabinet Member. There is separate guidance on this process available from the Legal Services team. The Alcatel letter can only be sent out after the Cabinet Member has signed the Key CMDN. Once the Key CMDN has been published the bidders are likely to become aware of the successful bidder so you should aim to make them informally aware of the tender outcome and intention to issue the Alcatel standstill letter at the same time as the Key CMDN is sent for publication. Confirmation of the award should follow once the call-in period has expired.
14. All contracts above £100,000 must be sealed in the presence of an Authorised Signatory and, once sealed, will be retained by Legal Services within the Deeds Room.

Contract formalities

15. There must be a sealed written contract in place between the Council and the contractor before the supply, service or work is started. If this requirement may cause difficulties, you should consult Legal Services. In exceptional circumstances, Legal Services may permit the contract to begin before the contract is sealed and measures can be put in place to protect the Council's position in the interim.

You must send the following documents to Legal Services to prepare and finalise the formal contract documents:

- Signed Director's Contract Award Report/Key cabinet member decision notice;
 - Invitation to Tender (including the terms and conditions);
 - Successful Contractor/Service Provider/Consultant tender submission;
 - Any other documents you wish to include in the contract
16. Signed, Sealed contracts will be listed in the Council's contract register and placed in the Council's Deeds Room and you will be forwarded a contract number for future reference.

Section 3 – Getting the Contract in Place

Where contracts are high value or high risk you should consult with your department's senior accountant or senior financial officer as to whether some form of security, such as a bond or parent company guarantee is required from the contractor

Bonds

1. A performance bond is a written guarantee provided to the Council by a contractor's bank or insurer. It requires the contractor to deposit a sum of money with the bank or the insurer and is therefore usually only suitable for high value or high risk contracts. If the contractor does not do what it has promised under the contract, the Council can claim from the bank or insurer the sum of money which is specified in the performance bond.
2. A performance bond is intended to protect the Council against the costs that arise from the contractor's failure to perform the contract. You must assess the need for the bond by considering the risks to the Council, including the:
 - complexity of the contract relating to delivery;
 - capabilities of suppliers, service providers or contractors;
 - financial standing and security of suppliers, service providers or contractors.
3. In limited circumstances it may be necessary to have an on demand bond (effectively a cash bond), however there is a significant cost to these and they should only be sought in limited circumstances and following legal advice.
4. You should consider whether a performance bond or any other form of security is required where;
 - a contract for works, goods or services is estimated to exceed the EU threshold or
 - where it is proposed to make stage or other payments in advance of receiving the whole of the works, services or supplies
5. Should a performance bond or other form of security be required, you must identify this in the tender documentation. Contact the Contracts and Procurement Team or Legal Services for a template version of the performance bond.
6. You should not allow the contractor to commence the contract for the works, services or supplies until the bond has been provided to the Council.

Parent company guarantees

7. A parent company guarantee could be requested from the contractor as an alternative form of security to a performance bond but only where the contractor has a parent company.

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8. A parent company is a company which owns a number of companies (known as subsidiaries). You should seek advice from the Procurement Team or Legal Services if you intend to request a parent company guarantee in any tender.

9. There are other lesser used forms of security that can be requested against the contract, such as cash, title deeds, debentures and legal charges. Please contact the Procurement Team or Legal Services for further advice if you need to consider these.

Contract documents

There are many different forms of standard contract. These are most frequently found in the construction industry (i.e. for works contracts) but others are also available.

The Legal Services team have knowledge of most standard forms of contract and also hold a standard set of terms and conditions which can be tailored to meet any forms of works, goods or services contract. These take account of the specific needs placed upon local government contracts e.g. freedom of information requests for contract documents and auditing obligations.

Requests for standard clauses and to discuss specific contractual requirements can be made by contacting Legal Services.

Section 4 – Changes to the Contract

This section sets out what you must do if

- you are unable to comply with any of the requirements of these Rules, or
- there is a change to the contract e.g. additional works have been identified after the contract has begun.

It is very important that you follow correct governance processes to authorise any changes to the contract or these Rules. In almost all cases you will require approval from your Director and other senior officers within the Council.

The Head of Legal Services is responsible for monitoring adherence to these Rules. Failure to obtain the correct authorisation at the appropriate time to deviate from these Rules may mean that you are in breach of your employment contract and oblige the Head of Legal Services to report repeated breach of the Rules to the Council.

Exemptions

1. It is the Council's policy that these Contract Rules should be complied with at all times. However, the Council recognises that circumstances may exist when it is not possible or desirable to comply with these Rules. On those occasions you may apply for an exemption from any or all of these Rules.
2. The fundamental principles of exemptions are that:
 - they should be used only in exceptional circumstances;
 - they are granted entirely at the discretion of the Corporate Director Resources, in consultation with the Head of Legal Services,
 - they should always be sought in advance of any purchasing as there is a general presumption that retrospective applications will not be approved, and
 - there is no automatic right to an exemption.
3. The Corporate Director Resources is accountable for giving appropriate approval to all exemptions and a record is kept of all those granted which is open to public inspection.
4. All exemption requests must be made in writing supported by justification for your application.

5. An exemption under this section **can never** be used where the total value of the contract exceeds the EU threshold. There are specific statutory exemptions which apply to contracts tendered under the EU process and you should always seek legal advice on these.

When may an exemption be allowed?

6. An Exemption may be allowed when:
- You want to obtain quotations or tenders from fewer bidders than these Rules require (including a single bidder) because they are the only suppliers which can provide the services or goods or works you want to purchase;
 - You are working in partnership with another public sector body and you are satisfied that their procurement rules have been complied with in the letting of the contract;
 - You want to extend or renew an existing contract which does not have provision for an extension and where a change of supplier would cause:
 - disproportionate technical difficulties;
 - excessive cost; and/or
 - significant disruption to services.
7. In all cases an exemption cannot be approved where the cost of the extension or contract exceeds the EU threshold.

Exemption procedure

8. To apply for an Exemption, you should complete an Exemption Report.
9. The Exemption Report should set out clearly the grounds on which you are applying for the Exemption and must specify which of the reasons listed above apply.
10. If there is information which you wish to keep confidential and not disclose to the public you should also complete an exempt annex. However, all local authorities are increasingly expected to disclose information to the public on the grounds of transparency and accountability. The Council will be allowed to withhold information only in exceptional circumstances where the interests of the Council or others may be severely damaged or compromised by disclosure.
11. The completed exemption report should be sent to Legal Services, Procurement and Finance for approval.
12. Once the required approvals have been obtained you must send the report to the Head of Legal Services and the Corporate Director Resources for formal approval of the exemption. Electronic approval will be sufficient.

13. The Corporate Director Resources is required to keep a register of approved exemptions.
14. In urgent circumstances, contact must be made with the Head of Legal Services and the Corporate Director Resources **before** taking entering any contract, to obtain an “in principle” decision. This means that, unlike usual procedures, the decision to award will follow after the contract has been awarded. Verbal authority given by the Executive Director, Resources will mean that the correct authority has been given for the contract, even though the paperwork will be retrospective.

Retrospective exemptions

15. An exemption to any of the Rules should never be sought retrospectively but exceptions to this principle will be allowed where:
 - It has been necessary to act urgently because of an unforeseen emergency which involves immediate risk of injury or damage or to prevent serious disruption to services.
 - it is necessary for an officer in Children’s Services or Adult Social Care to act immediately to secure care for any vulnerable person.
 - it is necessary to act urgently to secure a supply of goods eg Westcombe Engineering, where commercial offers are time limited and represent best value for the Council.
16. In both cases you should seek an ‘in principle’ decision from the Executive Director, Resources and the Head of Legal Services where possible, and the cost of the immediate action should not exceed the EU threshold. An exemption report should be completed as soon as reasonably possible after the contract has begun.

Assigning/Novating contracts

17. Assignment is the transfer of the benefit of contract to another party. The contract should detail the circumstances in which a contract can be assigned but if it does not you will need to consult Legal services on the process. Novation is the transfer of the rights, obligations and liabilities of an original party to an existing contract to a new party. You should contact Legal services on the form of the contract that should be used for the novation, which is usually in the form of a deed.
18. Where a contract is required to be assigned or novated you must first calculate the total value of the contract to determine the correct process. A contract may be assigned/novated, without the need to carry out a new procurement, where;
 - (i) There is reference to such a change within the tender documents; or

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(ii) The new contractor is replacing the existing contractor following a corporate restructure, takeover, merger, acquisition or insolvency, and as long as the new contractor fulfils the criteria upon which the existing contractor was selected (ie technical, financial capability).

19. Where a contract has a total value between £50,000 and £500,000 the assignment/novation will need to be approved by the following officers:

- Head of Legal Services; and
- Your Director (or if authorised, the Head of Service / Assistant Director)

20. Where a contract has a total value of more than £500,000 the assignment/novation will need to be approved by the officers listed above and:

- a credit check on the proposed contractor that the contract is to be assigned to have been carried out by Financial Services; and
- a Cabinet Member Decision Notice authorising the assignment/novation has been obtained; and
- a formal deed/notice of assignment, to be prepared by Legal Services, has to be entered into by the parties

Varying contracts

21. Variations of contract typically comprise:

- change in price, or
- change in service delivery or goods or works leading to a change in price

22. If the variation looks as if the original value of the contract is likely to be exceeded, the procedure for obtaining approval to the variation is as follows:

22.1 Non-EU procured contracts

- Increase is less than £50,000

The project/contract manager or officer must obtain approval to the increase in line with the authority listed in the quick reference guide.

- Increase is more than £50,000

In addition to obtaining the authority listed in the quick reference guide, the project/contract manager or officer must inform the Head of Internal Audit immediately. This means that as long as the contract as varied is still under £500,000, it can be authorised by the relevant officer(s) referred to in the quick

Part 4, Section 10 – Contract Rules

reference guide (subject to having informed Internal Audit). If the variation takes the contract value over £500,000 or if the original contract was over £500,000 and a key cabinet member decision notice was obtained for the contract, a further key cabinet member decision notice need not be obtained for the variation, unless Legal Services consider such a decision should be obtained.

The above is subject to;

(i) The variation not exceeding the EU threshold value for the works, services, supplies (ie accumulated value including the value of the variation) and;

(ii) The variation is lower than 10% of the initial contract value for services, supplies or 15% of the initial contract value for works.

22.1 EU procured contracts

Contact Legal Services for advice on whether the variation is likely to be treated as a new contract, requiring it to be re-tendered. If the advice from Legal Services is that the variation is unlikely to be treated as a new contract, the project project/contract manager or officer must follow the procedure outlined in the second bullet point of paragraph 22 above.

Section 5 – Ending the Contract

Terminating contracts

1. Where a contract is required to be terminated, other than by it expiring, seek advice from Legal Services.
2. Where a contract has a total value of between £50,000 and £500,000 the termination will need to be approved by the following officers:
 - Head of Legal Services; and
 - Your Director (or if authorised, the Head of Service / Assistant Director)
3. Where a contract has a total value of more than £500,000 the termination will need to be approved by the officers listed above and additionally
 - a Cabinet Member Decision Notice must authorise the termination and;
 - a termination notice must be issued to the contractor by Legal Services

Section 6 – Explanations

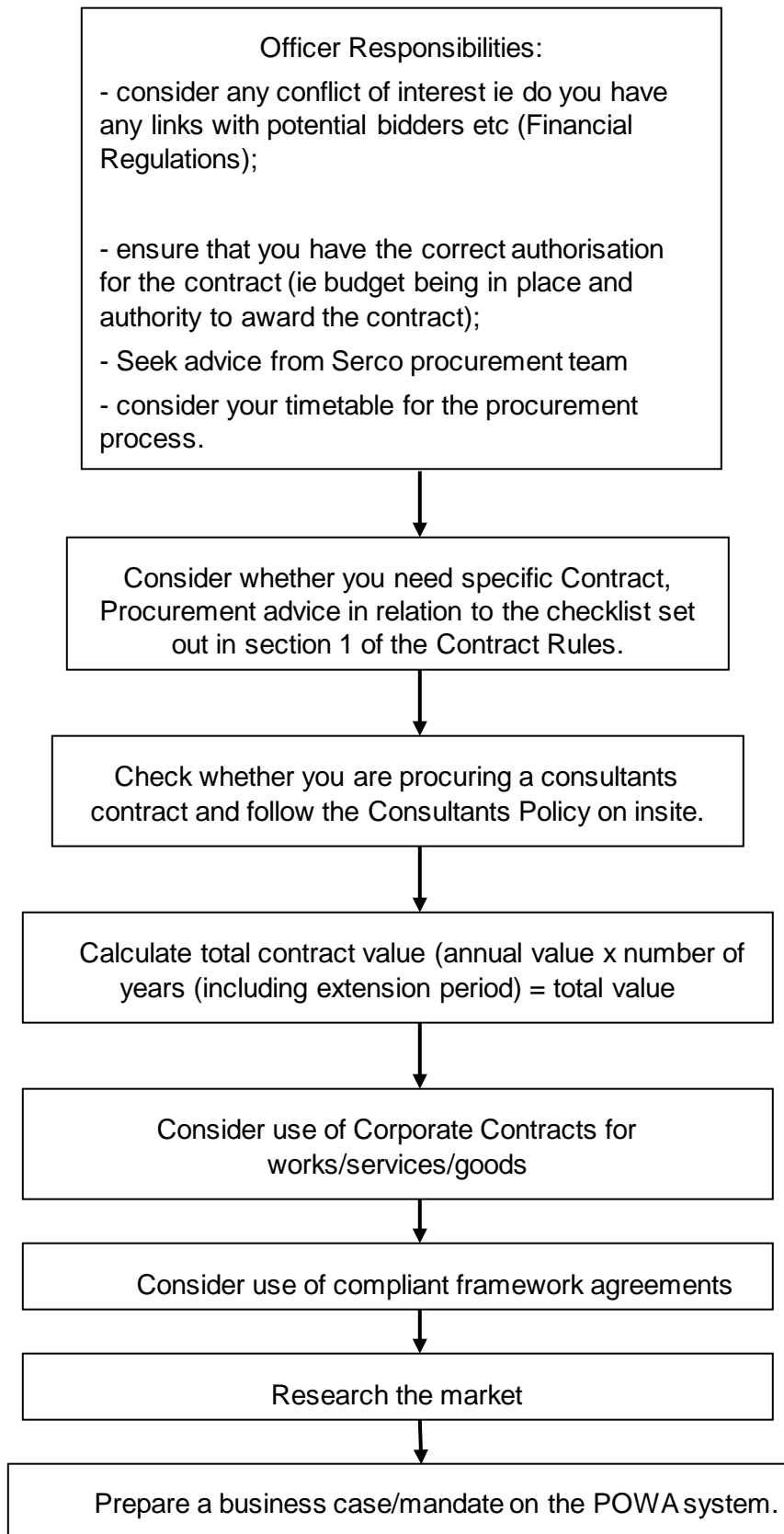
Glossary

Key terms in this section	Meaning
Authorised Signatory	Means the Chief Executive, Corporate Director Resources, Head of Legal Services (or delegated officers in Legal Services).
Business Case	A document that sets out the rational for undertaking a project and its costs, risks and benefits populated on POWA, the council's project management system.
Constitution	<p>The Council's constitutional document which;</p> <ul style="list-style-type: none"> - allocates powers and responsibility within the Council; - sets out delegations for its Executive including the cabinet members and delegation to officers; -sets out the rules of procedures, codes and protocols.
Delegated Authority	The process under the Constitution which sets out what senior officers of the Council are entitled to do in the Council's name e.g. to enter contracts. Most Director's will have delegated some of these powers to Heads of Service.
E-Sourcing	The researching and gathering of product or service information by electronic means, mainly by internet or email use.
EU threshold	The financial limit above which all tendering must follow a statutory procedure governed by EU directives. It applies to all public works contracts, public supply contracts and public service contracts which have a value including VAT estimated to be no less than the pre-established thresholds. The thresholds are recalculated every two years. See the Quick Reference Guide for the threshold amounts for the works, goods and services.
Financial Regulations	The regulations outlining the officer's responsibilities relating to financial matters.

Forward Plan	A forward plan is a list of published forthcoming key decisions to be taken during the following three months.
Framework Agreement	A framework is an agreement with suppliers to establish terms governing contracts that may be awarded during the life of the agreement. In other words, it is a general term for agreements that set out terms and conditions for making specific purchases (call-offs).
Key Decision	Any spend over £500k will be a key decision and the procedures for a key decision must be followed.
OJEU	Official Journal of the European Union. Contracts that are above the EU threshold are required to be advertised by placing a notice in the journal.
Procurement Strategy	A strategy document setting out the Council's approach to procurement and priorities for the next few years.
Purchase order	The order placed on the Council's financial management software system which commits funds to the contract.
State aid	State aid is a European Commission term which refers to forms of assistance from a public body or publicly-funded body, given to undertakings engaged in economic commercial activity on a selective basis, with the potential to distort competition and affect trade between member states of the European Union.

Flowchart

Beginning the process – Flowchart



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Peterborough City Council

Contract Rules

Under Section 135, Local Government Act 1972

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Introduction to Contract Rules

These Contract Rules are made pursuant to the power under section 135 of the Local Government Act 1972 to make standing orders with respect to the making of contracts for or on behalf of the Authority, which is a power reserved to Council as a function that may not be exercised by the Cabinet (executive) by virtue of schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.

Where a decision to procure goods or services or the decision to award a contract is an executive (Cabinet) function, who may or may not make that decision and up to what financial limits is to be determined in accordance with the Leader's Scheme of Delegation in operation at that time. The Leader's Scheme of Delegation can be found at Section 3 (Executive Functions) of Part 3 (Delegations) of the Constitution

These Rules apply to contracts or agreements with external organisations where the Council pays for:

- goods and/or services;
- works of any kind;
- hire, rental or lease of equipment.

The Rules also apply to any contracts made using:

- framework agreements,
- Constructionline (the UK register of pre-qualified construction services), recognised pre-qualified lists (Select Credit),
- or any contracts to be awarded on behalf of schools which are part of the LEA.

For high value contracts, officers must comply with national and European legislation and guidance issued by the Cabinet Office, Crown Commercial Services which will **override** these Rules. You must seek advice from Legal Services and the Procurement Team about that process.

Which contracts are NOT covered?

These Rules do **not** apply to:

- Arrangements between different parts of the Council. Such arrangements are covered by service level agreements (**SLA**). For example, an agreement for Legal Services to provide legal advice to the Strategic Property team;
- Employment contracts between an individual and the Council;

Part 4, Section 10 – Contract Rules

- Buying or leasing land or buildings. These are covered by the Land Disposal Rules within the Financial Regulations;
- Grants of money. Grants cannot be contracts as they do not deliver services to the Council. Any grants of money must be in accordance with the Constitution and prior advice should be sought from Legal Services in relation to the governance process for award of grants and the legal documentation that will be required to be put in place. These Rules are not a guide to purchasing. These are the fundamental rules designed to ensure ethical processes around contracting.
- Certain collaborative arrangements between local authorities eg section 75 agreements.
- Public body to Public body co-operation - Contracts with other public bodies where the parties come together to deliver a public service, under the following conditions;
 - (i) achieve objectives which are common to both parties; and
 - (ii) the arrangement is solely for the public interest; and
 - (iii) the parties perform less than 20% of the services covered by the arrangement on the open market.
- In-house awards (this is where the Council awards a contract to an entity it controls. This exemption will only apply if **all** of the following conditions are met;
 - (i) The Council exercises a similar control on the entity as it does with it's own departments;
 - (ii) The entity carries out more that 80% of it's activities for the Council;
 - (iii) There is no private sector money in the entity.

Note that contracts for healthcare services covered by the NHS (Procurement, Patient Choice and Competition (No.2) (Regulations) 2013 will be governed by the Public Contracts Regulations 2006 until 18 April 2016, after which date the Public Contracts Regulations 2015 will apply.

Officer responsibilities

All officers must:

- Comply with the Council's Financial Regulations and, in particular, declare any conflicts of interest in a potential contract or with bidders;

- Declare any gifts or hospitality received either before, during or after the procurement;
- Report any gifts or hospitality which may have improper motive to the Internal Audit team;
- Not disclose any confidential information to unauthorised persons;
- Ensure they have authorisation for the contract from an appropriate officer or member;
- Conduct the procurement process in a open and transparent manner;
- Enter all consultancy and interim manager contracts and certain higher value (above £50,000), or high risk contracts onto the POWA management system;
- Ensure the Serco procurement team are engaged to support the process as necessary
- Achieve the best value for money achievable;
- Be fair to all bidders;
- Ensure that all equality issues are addressed (carrying out an equality impact assessment where required).

Chief Officer Responsibilities

The Constitution states:

“The Chief Executive, Directors and the Deputy Chief Executive are authorised to deal with contractual matters in accordance with the contract rules” (Part 3)

Therefore Directors must:

- Ensure that their Officers comply with these Rules and the Financial Regulations;
- Ensure their Officers inform the Serco Procurement team of all procurement exercises, including contracts awarded so that it can maintain an accurate and up-to date register of all Council contracts;
- Check that they have an appropriate authorisation, or have put in place an appropriate delegated authorisation, before any contract is awarded and commenced.

By following the Rules, officers will:

- ensure the Council’s procurement is legal;
- deter corruption;
- achieve value for money;

- show that the Council is accountable for its expenditure;

Advice and assistance

Officers can also contact the following people for advice and assistance:

Contracts and Procurement Team

Project Delivery

Legal Services

~~Gurdeep Sembhi Tel: 452323~~

Israr Ahmed Tel: 452326

Alex Maxey Tel: 452325

Serco Procurement Team

~~buyingsupportcommercialandprocurementunit@peterborough.gov.uk~~

~~1. Richard McCarthy (People and Communities Directorate) Tel : 384606~~

~~2. Darren Ford (Resources, Governance and Growth and Regeneration) Tel : 384649~~

~~PCC Procurement Andy Cox~~

~~andy.cox@peterborough.gov.uk~~

~~Tel: 452465~~

~~Review date – December 2015~~

Quick Reference Guide

VALUE (Including VAT)	PROCESS	EXEMPTION FROM RULES BY	DECISION TO AWARD	FORMALITIES	AUTHORITY TO SIGN OR SEAL CONTRACT	OTHER
Contracts under £25K	1 quotation	Exemption report signed by Corporate Director Resources	Contract award notice signed by relevant Director or CEX or their delegates	Purchase order (Financial system)	CEX or relevant Director (if written contact exists) or delegated authority	
Contracts between £25K & £50K	3 quotations For Contracts over £25,000, also place advert on Contracts Finder.	Exemption report signed by Corporate Director Resources in consultation with the Head of Legal Services	Contract award notice signed by relevant Director or CEX or their delegates	Purchase order (Financial system) and correspondence	Authorised signatory or relevant Director or delegated authority	Enter contract onto contract register
Contracts between £50K and EU threshold (£213,477,173K for goods and services or £5,336,9374.3M for works or £663,540,750,000 euros for services falling under Sch 3 of the Public Contracts Regulations 2015)	Tender with 4 bidders For Contracts over £25,000, also place advert on Contracts Finder.	Exemption report signed by Corporate Director Resources in consultation with the Head of Legal Services	Contract award notice signed by relevant Director or CEX or their delegates	Formal contract approved by Legal Services	Authorised signatory (CEX or Corporate Director Resources or Head of Legal Services) or delegated authority All contracts over £100k are to be sealed under the Council's seal.	Seek advice on bonds or parent company guarantee Enter project on POWA Notify risks to risk register Written approval of Director and Head of Legal Services to terminate or assign

						Extension to be agreed by Director (if contract provides for extension) and subject to approval by Legal Services and Procurement.
Contracts over EU threshold (£213,477,173K for goods and services, £5,336,9374.3M for works or £663,540,750,000 euros for services falling under Sch 3 of the Public Contracts Regulations 2015)	EU process (seek procurement and legal advice including advice on social improvements for services contracts)	<p>Only statutory exemptions from the EU process are permitted</p> <p>Officers cannot provide exemption from the statutory rules</p>	<p>Contract award notice signed by relevant Director or CEX or their delegates</p> <p>Key decisions must be on the Forward Plan at least 28 days in advance</p>	Formal contract approved by Legal Services	<p>Contract sealed</p> <p>Authorised signatory (CEX or Corporate Director Resources or Head of Legal Services) or delegated authority</p>	<p>Seek advice on bonds or parent company guarantee</p> <p>Enter project on POWA</p> <p>Notify risks to risk register</p> <p>Written approval of Director and Head of Legal Services to terminate or assign</p> <p>Extension agreed by Director (if contract provides for extension) and subject to approval by Legal Services and Procurement.</p>
Contracts subject to EU process and over £500K (Applies to goods, services and works contracts over £500K)	Apply the relevant process above	For goods and services: Only statutory exemptions from the EU process are permitted. Officers cannot provide an exemption	<p>Key Cabinet Member Decision Notice (CMDN) signed by the Cabinet member</p> <p>Decision on Forward Plan</p>	Formal contract approved by Solicitor to Council	<p>Contract sealed</p> <p>Authorised signatory (CEX or Corporate Director Resources or Head of Legal Services) or delegated authority</p>	<p>Seek advice on bonds or parent company guarantee</p> <p>Enter project on POWA</p> <p>Notify risks to risk register</p>

		For works contracts: The Executive Director, Resources can approve exemptions up to the EU threshold	at least 28 days in advance			Written approval of Cabinet member to terminate or assign Extension agreed by Director (if contract provides for extension) and subject to approval by Legal Services and Procurement.
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NOTE FIGURES ABOVE EU THRESHOLDS ARE SUBJECT TO CHANGE AND YOU SHOULD CHECK WITH LEGAL SERVICES AND SERCO PROCUREMENT

Section 1 – Beginning the Process

Before beginning any purchase you have to go through each of the steps in this section. It will help you determine how to apply the remainder of these rules.

Before contracting

Before any purchase you must take the following essential steps to ensure that you are getting best value for the Council:

- Calculate the total contract value
- Consider whether any corporate contracts ought to be used
- Research the market
- Discuss with the Serco procurement team
- Consider what other advice/assistance you may need:
 - Does the contract involve land or buildings e.g. is a lease or licence required? If so, contact the *Estates* team and finance team;
 - Are any employees affected by the contract? If so, contact *Human Resources & Legal Services*;
 - Is equipment, plant or machinery to be transferred under the contract? If so, consider *Financial Regulations and seek advice from finance team*;
 - Is there any issue of state aid? If so, contact *Legal Services*;
 - Who has the correct delegated authority to authorise the contract? Contact *Legal Services* if in doubt;
 - Are there any equality issues within the contract, are there any requirements that need to be considered under the Public Sector Equality Duty, is an equality impact assessment required? If assistance is required, contact *Legal Services*;
 - Contract value issue?
 - Is the contract really a SLA or a Grant Agreement? If assistance is required, contact *Legal Services*;

Does the contract involve services above the EU threshold? If so, consider what social improvements might be secured and if consultation is required (under the Public Services (Social Value) Act 2012. Contact *Legal Services* if in doubt;

- Prepare a Business Case (POWA) for any contract using consultants or interim managers of any value or other contracts above £50K

Calculate the total contract value

The contract value determines the process you must follow under these Rules. The valuation must be inclusive of any VAT payable.

You can calculate the total estimated value of the contract according to a simple formula

$$\text{Annual value} \times (\text{number of years} + \text{extension period}) = \text{total value}$$

The calculation may be subject to the following variances:

- where the contract is for a fixed period, the value is the total price to be paid or which might be paid during the whole of the contract period, including any possible extensions to the contract period;
- where a number of goods or services contracts are to be entered into, the estimated value of each contract shall be the total value of the payment which the Council expects to pay under each of those contracts;
- where a number of works contracts are to be entered into, the estimated value for carrying out the works shall be total value of the payment which the Council expects to give under all the contracts for carrying out the works;
- where the contract is for services has been provided over an indefinite period the value is obtained by multiplying the monthly payment under the contract by 48;
- where a service contract includes one or more options the estimated value of the contract shall be determined by calculating the highest possible payment which could be given under the contract;
- where the contract is a single contract comprising services, supplies or works in combination, the value is calculated according to the price of the largest element of the contract.

Some contracts may not be for a cash value. Where this is the case please contact Legal Services who will assist you in calculating the contract value.

You should not enter into a series of separate lower value contracts with the intention of avoiding these Contract Rules.

Prepare a business case or mandate

The POWA system has been designed by the Council to monitor projects undertaken by the Council or using Council budgets. You must use POWA if it involves;

- Any purchasing as part of a project which is outside of 'business as usual'.
- Any use of a consultant or interim manager.
- Any purchase over £50,000 in value.
- Any contract carrying high risk.

There are no strict financial limits around the requirement to enter a project on POWA but it is considered best practice for officers to make more comprehensive use of the POWA system.

Information and guidance on POWA can be found on Insite.

Please see the 'Consultant and interim's Policy' on Insite for further information on the use of consultants and interim managers.

Corporate contracts

The Council has entered into a number of partnership arrangements for either;

- direct delivery of internal services (e.g. IT with Serco);
- direct delivery of its services to the public e.g. the refuse collection service provided by Enterprise, leisure and cultural services provided by Vivacity), or
- centralised procurement of other bought in services (e.g. travel and hotel bookings, agency staff etc.).

These contracts create an exclusive arrangement between the Council and our partners for the services those partners provide. This means that you are obliged to use these service providers for the services they deliver. These are referred to throughout these Rules as the corporate contracts.

For all other services which fall outside of those contracts you have to tender any purchasing on the open market. You must also invite our partner to tender for the goods, services or works if they have the ability to provide those services but, within that tendering process, they are treated the same as any other bidder.

Failure to use the corporate contracts may result in the Council being in breach of contract and is likely to incur financial penalties for the Council.

Please contact the Serco Procurement team for advice on our corporate contracts.

Contracts reserved for mutuals

You can limit competition for services such as administrative services in relation to education, healthcare and housing, health and social work services, library and other cultural services to

mutual type organisations. For such contracts the maximum duration is three years. A mutual type organisation must meet all of the following requirements;

1. The organisation's objective must be the pursuit of a public service mission linked to the services set out in the Public Contracts Regulations 2015;
2. The profits of the organisation must be re-invested to achieve the mission;
3. The organisation must be employee owned or require active employee organisation;
4. The organisation must not have been awarded a contract under this process within the last three years.

Contact the Legal Services Team, Serco Procurement Team and Finance Team if you wish to undertake such a process.

Research the market

Researching the market is an important tool in identifying potential cost savings to the Council. The Serco Procurement Team can assist you to identify where you can add value to your tendering process by undertaking proper market research.

You are permitted to consult potential suppliers prior to starting your purchase in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters provided you do not:

- prejudice any potential bidder; or
- favour any potential bidder so as to distort competition.

Where the Council has invited a potential bidder to take part in preliminary discussions then the outcome of any such discussions must be shared with all bidders participating in the procurement process.

You may also seek or accept advice from individual experts/bidders and use the advice in your planning for the procurement process. Ensure that you act fairly with all bidders and do not favour one bidder over the other, also keep a record of all measures taken.

The Serco Procurement Team can assist you with carrying out effective market research.

Framework agreements or local market tendering

The Council's Procurement Strategy will determine whether you should seek to achieve cost efficiencies through use of framework agreements or whether you should tender in smaller lots as

a way to encourage bids from small to medium enterprises (SME's), in particular to target and stimulate local business.

There are numerous framework agreements for pre-tendered goods and services. There is generally no requirement to use a framework agreement but best value is often achieved by procuring through a framework agreement.

Use of a framework agreement may require you to engage in a mini-competition. This will be determined by the terms and conditions relating to the framework.

The Procurement Team can advise you on the various framework agreements available and provide advice on how to structure your tender to take advantage of the competition.

In some cases it may be preferable to tender the contract in smaller lots to allow local businesses the opportunity to tender for the work. Whilst smaller contracts may encourage local businesses to tender, you cannot limit the tendering process to local businesses alone as this would be to breach the requirement to be fair in your tendering process.

Other considerations

Please do consider each of the following before beginning any tendering exercise.

The need for the purchase

- Is the cost of purchasing outweighed by the benefits received?
- Have you considered other alternatives to your purchase or whether you might co-purchase with other Council Departments and so achieve further economies of scale?
- Are there products or skills within the Council that can be used without the need to source these externally?

Risks arising

- Consider any risks associated with the purchase and how they are to be managed. Is this something that needs to be addressed on the departmental risk register?
- Have you factored in critical support and maintenance arrangements (i.e. whole life costing) if appropriate to avoid later negotiations? This is particularly important if your purchase involves any land or buildings.
- Have you identified whether there will be any potential conflicts of interest arising in the conduct of the procurement process, which can be seen as unfair and distorting competition?. You need to; (i) identify whether any staff member or other person involved in the procurement process on behalf of the Council has any direct/indirect/financial/personal interest which could be seen as comprising the impartiality and independence of the procurement process;(ii) ensure that the person has no further involvement in the procurement process if there is a potential conflict of interest; and (iii) Complete the conflict of interest form provided by the Procurement Team and ensure it is kept up to date.

Process

- Make sure you have selected the most suitable procurement method for the purchase e.g.
- Through the use of a corporate contract;
- sourcing through a framework; or
- partnering and collaborative arrangements with other local authorities or public bodies;
- Note you cannot use a Pre-Qualification Questionnaire stage in the selection of bidders, refer to Section 2 of the rules for guidance. It is important to note that you can only ask suitability assessment questions and must give full regard to the guidance from the Cabinet in relation to such suitability questions. Contact the Procurement Team for assistance.

Governance

- Do you have the available budget?
- Do you have the appropriate approval for the expenditure in line with the Constitution?
- If the purchase requires a Cabinet Member decision, consider whether it is a key decision and has to be included on the Forward Plan in line with the Council's Constitution;
- Have you notified the Procurement Team if the total value of the contract is above the relevant EU threshold?
- Have you involved Serco procurement team in progressing the procurement process to ensure value for money is being achieved if not using a corporate contract or framework contract ~~and the procurement is in excess of £5k?~~

Key practical points

- Factor into your timetable sufficient time to prepare the tender documents especially the evaluation criteria in advance of beginning the tendering process.
- Consider the essential elements of your contract and ensure that these are included in your conditions of contract.
- Ensure that your contract budgets for the whole life costs of the contract.

Section 2 – Process according to Value

Part A: Contracts below £25,000

This section sets out the requirements that officers must follow when purchasing works, goods or services where the total value of the contract is below £25,000.

Getting a quote

1. For contracts for works, goods, or services with an estimated value ~~not exceeding~~below £25,000, you must either:
 - obtain a quote under one of the Council's corporate contracts, or
 - place an order with a contractor under a framework agreement, or
 - obtain a quote from other relevant suppliers
2. Officers should note that they are required to obtain a quote from a corporate contract where one exists for the supply of those services.

Formalities

3. There must be a written record of the quotation, which may be in the form of a letter or email to or from the contractor.
4. You should consider the following information as essential to include in any quote:
 - the specification of the goods, services or works to be supplied;
 - payment provisions in line with Financial Regulations;
 - the Council's termination rights;
 - the key time or times when the contract is to be performed;
5. You must have a purchase order in line with Financial Regulations. This may require you to set up the supplier on the Council's accounting system in accordance with Financial Regulations.
6. The decision to award the contract and any written terms must be agreed in writing by your Director (or the Chief Executive) unless they have delegated that authority to you or another senior officer within your team.

Part B: Contracts between £25,000 and £50,000

This section sets out the requirements that officers must follow when purchasing works, goods or services where the total value of the contract is between £25,000 and £50,000.

Obtaining quotations

1. In the case of contracts for works, goods or services with an estimated value between £25,000 but not exceeding £50,000 you must first consider:
 - Whether you must procure those services through an existing corporate contract,
 - Whether a corporate contract can supply those services, or
 - Whether you have to source those services on the open market.
2. If a corporate contractor does supply those services or can procure those services on our behalf, you must instruct them directly. If you do not wish to make use of a corporate contract you will need to complete an exemption report (see section 4) prior to tendering to obtain the authority of the Executive Director, Resources not to do so.
3. If you are sourcing those services on the open market, you must obtain at least 3 written quotes and select the provider that offers the best value for money. You should consider whether to ask for assistance from the Procurement Team even for such low value contracts as they may be aware of ways in which you can maximise resources to achieve best value.
4. If 3 quotes cannot be obtained due to lack of suitable contractors, the Officer must complete an exemption report prior to awarding any contract. This is to obtain authority to be exempted from this Rule. For further information please see Section 4 of these Rules.

Advertising the Contract

5. Although there is no specific requirement to advertise a contract between these values, officers and our corporate partners are positively encouraged to advertise contracts where
 - the contract value is ~~above~~ £25,000 or above;
 - competition in the market is strong, or
 - the number of potential suppliers is high.
6. Advertisements can be placed on the Council's website, in the trade press and on websites specifically set up for contract advertisements .
For contracts estimated to be ~~over~~ £25,000 or over and which have been advertised, you must ensure that within 24 hours the advertisement relating to the contract opportunity is also advertised on Contracts Finder. This requirement will not apply where a framework has been set up of pre-selected suppliers and you intend to choose suppliers from the framework. The following details must be included in the advert on Contracts Finder;

- Date and time by which an interested supplier must respond if it wishes to be considered for the contract opportunity;
- How and to whom the supplier must respond;
- Any other requirements for participating in the procurement;
- Internet address where the documents can be accessed from.

You must ensure that unrestricted, free and full direct internet access is given to the documents relating to the procurement. You must also have regard to any guidance issued by the Cabinet Office in relation to the form and manner in which the information is to be published on Contracts Finder.

The Procurement Team can provide assistance with advertising.

Framework agreements

7. Where a suitable framework agreement exists you may use the framework if the Council is mentioned as a potential purchaser under the framework agreement. You must follow the procedure set out in the framework agreement and do not have to obtain 3 quotations. The Procurement Team can assist you in selecting an appropriate framework agreement and advise you on the process for obtaining quotes.

Known suppliers

8. In some cases you may already be aware of suppliers possessing a particular type of goods or service or works expertise that you are seeking. You may seek 3 quotations from any suppliers known to you but you must ensure that:
 - you do not use these suppliers in preference to any corporate contracts;
 - you do not discriminate in your selection of any particular supplier.

Invitations to Quote

9. Although quotations do not require a formal process you must ensure that your request for quotes is made in writing and must set out a simple specification for your purchase. You should also state the basis upon which you will select the successful quote.
10. You must have a purchase order in line with Financial Regulations once you have selected the successful quotation.
11. If you select any supplier who is not the cheapest quote, you must record your reasons for

selection in writing.

Higher value quotations

12. Where the value of the contract is between £45,000 and £50,000 Officers are encouraged to pursue a more formal quotation process. Officers not following a formal quotation process must record their reasons in writing. Officers should consider drafting an Invitation to Quote comprising of the following:
 - Bidders information about the process being used;
 - Specification of the goods, services or works being purchased;
 - Award criteria and procedure;
 - Tendering and canvassing certificate;
 - Contract terms and conditions.
13. The Invitation to Quotation must state that:
 - the Council is not bound to accept a quotation and;
 - late submissions or submissions which do not comply with the Council's award procedure will be rejected.
14. The Invitation to Quotation must include the contract terms and conditions that will apply to the contract setting out:
 - details of the goods, services or works to be supplied;
 - payment provisions;
 - the Council's rights to terminate the contract;
 - the key time or times when the contract is to be performed;
15. The Officer must consult Legal Services before an Invitation to Quotation is issued where the purchase involves one or more of the following:
 - the transfer of non-land assets.
 - the transfer of staff.
 - the transfer or lease of land.
 - potential state aid issues.
16. Your Director can award a contract up to £500,000 in value upon receipt of a contract award report. The contract award report must be completed and submitted to your Director (or delegated officer) for approval. The signed award report must be kept by the department for future reference.

17. You must publish a contract award notice on Contracts Finder within a reasonable time once you have awarded a contract, which must contain the following details;

- Name of the supplier;
- Date of contract;
- Total contract value;
- Whether the supplier is a SME (small, medium size enterprise);
- Whether the supplier is a non-governmental organisation that is value driven and surplus Monies are re-invested to further social, environmental or cultural objectives.

Information does not have to be published where the release would be contrary to the public interest, impede law enforcement, prejudice the legitimate commercial interests of a particular economic operator, might prejudice fair competition between suppliers.

You must also have regard to any guidance issued by the Cabinet Office relating to the form in which such information is to be published.

18. The contract can be signed by the relevant Director.

Part C: E-tendering

1. Electronic Procurement (e-procurement) is the use of an electronic system to advertise and invite tenders for goods, works and services.
2. E-procurement covers the whole purchasing cycle. This is also known as the 'purchase-to-pay' cycle and includes:
 - electronic requisitioning,
 - electronic tendering,
 - electronic ordering,
 - purchasing cards and
 - electronic Payment/Invoicing.
3. The e-tendering system must be used for any purchase of goods, works or services above £50,000, however officers are encouraged to use the system for contracts below £50,000 where possible. Where contracts are advertised in OJEU, all tender documents must be made available electronically. This means that from the date the OJEU notice is published, you must ensure that all specifications, the descriptive document, proposed conditions of contract and any other documentation are ready for interested suppliers.
4. To use the e-procurement system you should contact the Procurement Team to register yourself as a user on the e-sourcing system. Training and user guides will be provided.
5. The following sections of these Rules anticipate that you will use the e-procurement system for any purchasing. If you do not wish to use the e-procurement system you will need to discuss this with the Procurement Team.

Part D: Contracts between £50,000 and EU values

Contracts in this range of values are subject to the Council's tendering procedures as set out in this section. E-procurement is the preferred method of tendering and use of framework agreements is likely to be more common. You are therefore very likely to need assistance from the Procurement Team throughout this process and an early request for assistance is recommended.

Prior considerations

1. In the case of contracts for works, goods or services with an estimated value between £50,000 to the EU threshold you must first consider:
 - Whether you must procure those services through a corporate contract, or
 - Even though procurement through the corporate contract is not necessary, whether a corporate contract can supply those services, or
 - Whether you have to source those services on the open market, or
 - Whether you want to call off those services from a framework agreement.
2. If a corporate contractor can supply or procure those services, you must instruct them directly. Where they are procuring works, goods or services on your behalf they must follow these tendering procedures. If you do not wish to procure through the corporate contract you will be required to complete an exemption report (see section 4) before placing any orders for goods, services or works.
3. If you are sourcing those services on the open market, you must tender for a supplier using the e-procurement system.
4. Where there is a lack of suitable contractors on the market to merit a tendering process, you must complete an exemption report. This is to obtain authority to be exempted from this Rule. For further information please see Section 4 of these Rules.

Using a framework agreement

5. A framework agreement comprises pre-assessed suppliers. Use of a framework therefore simplifies the tendering process and offers considerable cost reduction. Before opting to use a framework agreement you should also consider whether there is benefit in re-packaging the tender to enable local businesses to compete for the contract.
6. A framework agreement will be suitable where you are contracting for services, goods or works
 - commonly available
 - frequently used

7. A framework agreement may not be suitable for your supply where it involves:
- particularly complex or risky procurements;
 - one-off procurements where the product or service requires a specialism;
 - procurements which are looking for particularly novel solutions;
 - where the contract length would be longer than four years;
8. Before using any framework agreement please ensure that the Council was identified as a potential purchaser in the OJEU notice. Advice on this can be sought from the Procurement Team or Legal Services.

Awarding a call-off

9. Once you decide on a framework agreement you must call off your individual contract under the framework either by;
- placing a direct order/direct award or
 - holding a mini competition
10. The method of call-off will depend on the terms and conditions of the framework. Some larger frameworks are divided into a number of lots, which may have been set up to enable direct ordering whilst others are designed to provide more bespoke solutions with the terms, conditions and solutions being refined through mini competition.
11. You cannot make any substantive changes to the specification or the terms and conditions of the framework so you must follow its terms in order to procure under the framework.

Tendering process

12. Officers who have assessed that they do not want to award through a framework agreement are required to carry out a formal tendering process. The Council's preferred method is e-procurement. Note you cannot use a Pre-qualification Questionnaire for contracts within the values mentioned in this section. See Section 1, Other Considerations, Process.

Advertising

13. You are required to advertise any contract you wish to tender whose total value is ~~over~~ £25,000 or above.
14. You must ensure an appropriate level of advertising having regard to:
- The subject matter of the contract;
 - The value of the contract;

- The size and structure of the market and common commercial practices in that market;
- The location where the goods or services will be delivered.

15. The greater the interest of the contract to potential bidders, the wider should be the coverage of the advertisement. Depending on the above criteria, advertisements could be placed on the Council's website, in the trade or local press, on websites specifically set up for contract advertisements or, where the contract borders on the EU threshold, in the Official Journal of the European Union (OJEU).

For contracts estimated to be ~~over~~ £25,000 or over and which have been advertised, you must ensure that within 24 hours the advertisement relating to the contract opportunity is also advertised on Contracts Finder. This requirement will not apply where a framework has been set up of pre-selected suppliers and you intend to choose suppliers from the framework. The following details must be included in the advert on Contracts Finder;

- Date and time by which an interested supplier must respond if it wishes to be considered for the contract opportunity;
- How and to whom the supplier must respond;
- Any other requirements for participating in the procurement;
- Internet address where the documents can be accessed from.

You must ensure that unrestricted, free and full direct internet access is given to the documents relating to the procurement. You must also have regard to any guidance issued by the Cabinet Office in relation to the form and manner in which the information is to be published on Contracts Finder.

Preparing the tender documents

16. To complete the tender process you must prepare the following documents:
- An Invitation to Tender including the evaluation criteria;
 - Specification of goods, services or works to be supplied;
 - A tendering and canvassing certificate;
 - Parent company guarantee or performance bond (where appropriate);
 - Standard conditions of contract. You must include provisions stipulating that the Council will pay the supplier no later than 30 days from date of the invoice. You may also include further specific conditions relating to the performance of the contract ie economic, innovation-related, environmental, social or employment related conditions. These conditions must be linked to the subject matter of the contract and set out within the tender documents. Contact Legal Services for advice and preparation of these clauses.

Preparing the evaluation criteria

17. Before starting the tender process, you must define the evaluation criteria. This details how the bids will be evaluated. It is essential that the methodology for the award is set out in the Invitation to Tender.
18. You must apply the relevant British and any equivalent European or international standards to define the required quality of the goods or services being purchased.
19. The evaluation criteria must be relevant to the services, goods or works being purchased and must be designed to secure value for money for the Council.
20. The evaluation criteria for award of the contract must be based on:
 - the most economically advantageous (MEAT) bid (in other words, where quality, performance or improvements are as important as price); or
 - the lowest price (where price is the only factor).

You can also use a cost-effective approach for the evaluation criteria ie considering environmental and social aspects, qualifications and experience of staff, after sales service, delivery conditions, quality impacting on level of contract performance. These must be linked to the subject matter of the contract.

21. If the most economically advantageous criteria are to be used, they can be further defined by relevant sub-criteria, examples of which are set out as follows:
 - price;
 - quality and performance;
 - running costs;
 - technical merit;
 - economic advantage based on past experience;
 - delivery date;
 - environmental considerations;
 - aesthetic and functional characteristics;
 - safety;
 - after-sales services;
 - technical assistance; and
 - other relevant matters.

22. Where sub-criteria are used, they must also be set out in the Invitation to Tender.

23. The evaluation criteria must not include non-commercial considerations. These are criteria which are not directly relevant to the operation of the contract e.g. the terms and conditions of employment of the bidders' workers or the country of origin of the bidder.
24. The award criteria cannot include matters which discriminate against suppliers from the European Union or signatories to the Government Procurement Agreement.
25. As the evaluation stage is the most likely point at which a challenge may be made to the procurement process you are advised to seek assistance from the Procurement Team regarding evaluation modelling.

Defining the evaluation procedure

26. Bids can be evaluated by using the bidders' written submissions only or you may want to arrange face to face interviews with the bidders and/or ask for bidder presentations to supplement the written submissions.
27. You must choose which process you will use to evaluate the bids and set this out in the Invitation to Tender.

Preparing the invitation to tender

28. The Invitation to Tender sets out the basic rules for the tendering process and you must use the standard template Invitation.
29. The invitation to tender must state that
 - the Council is not bound to accept the tender;
 - late submissions and submissions which do not comply with the Council's e-tendering procedure will be rejected;
 - the e-tendering system does not allow acceptance of tenders via email or post;
 - the date and time for submission of tender and that late tenders may not be accepted;
 - the tender submission closing time is governed by the e-tendering system's clock which automatically records receipt of tenders and retains that information;
 - Where bidders are asked to upload files, you must advise them that single file sizes must not exceed 5mb.
30. The invitation to tender should be accompanied by standard conditions of contract. You need to consider whether there are further conditions relevant to the contract e.g. the time the service is performed, the date on which goods are delivered etc. In some cases standard contracts (e.g. JCT contracts) will be available.
31. Officers must consult Legal Services before a tender is issued for any contract which involves one of the following:
 - the transfer of non-land assets;

- the transfer of staff;
- the transfer or lease of land;
- any form of payment assistance to the bidder (state aid).

Clarification procedures

32. All clarification and communication during the tender process should be channelled through the e-tendering systems messaging tool. Never email bidders via your email account during the tender exercise as there is no clear audit trail to support your process. When a message is received from a bidder a notification will be emailed to you to respond to the message. Any queries raised by a bidder and clarifications provided should be forwarded to all bidders with anonymity of the bidder raising the query.
33. If an error is identified in the invitation to tender before the closing date for submissions and is significant enough to warrant amendment, all bidders should be informed of the error and invited to adjust their bids.

Submission, receipt and opening of tenders

34. Tenders will only be available to evaluate following the closing date for submissions.
35. Tender evaluation may be completed within the e-tendering system on line or off line.

Post tender negotiation

36. If an error is identified in the invitation to tender after the closing date for submissions and is significant enough to warrant amendment, all bidders should be given details of the error and given the opportunity to withdraw their offer or to submit a revised bid within a defined period.
37. Where there is a minor error or discrepancy in the successful tender which would affect the tender figure, the bidder should be given details of the error or discrepancy and given the opportunity to confirm, correct or withdraw its bid. If the bidder withdraws its offer, the next most competitive bid should be assessed.
38. Following receipt of the tenders, you may clarify or negotiate with a preferred bidder to obtain an improvement in terms of price, delivery or service. Any such clarification or negotiation must:
 - not discriminate against other bidders, and
 - not alter the original specification except where Legal Services or Procurement have advised that special circumstances exist that can be substantiated, and

- have the prior authorisation of Legal Services or the Procurement Team, and
- be confirmed in writing by the bidder.

Evaluation, selection and de-briefing

39. The e-tendering system may be used as a document exchange system where tenders are uploaded to the system and then evaluated off-line or you may use the systems tender questionnaire which will enable you to evaluate the bids online within the e-tendering system.
40. Bids must be evaluated and the successful bidder selected in line with the advertised award criteria and the award procedure.
41. There is no requirement for a standstill period in non-EU tendering but it is considered good practice to debrief unsuccessful bidders before awarding the contract to identify and avoid any potential challenges from an unsuccessful bidder.
42. You may want to include the following matters in any debrief:
 - identifying the bidder to whom the contract will be awarded,
 - the reasons for the decision,
 - the award criteria,
 - a full breakdown of the bidder's scores against each of the criteria and sub-criteria together with an explanation why the successful bidder achieved a higher score,
 - the score of the successful bidder,
 - the reasons (if any) why the bidder did not meet the technical specifications.
43. Apart from the debriefing permitted by this Rule, the confidentiality of tenders and the identity of bidders must be preserved at all times and information about one bidder's response must not be given to another bidder.

Award report

44. Provided there is no challenge to the decision to award the contract you must prepare a contract award report to authorise the award of the contract which must be sent to Legal Services, Procurement and Finance for approval before your Director signs off the report. The report must be signed by the Director or a senior officer with authority delegated from the Director.
45. Once your contract award notice has been approved, you will need to notify all bidders of the result via the e-tendering system. In addition, you must also publish a contract award notice on Contracts Finder within a reasonable time once you have awarded a contract, which must contain the following details;

- Name of the supplier;
- Date of contract;
- Total contract value;
- Whether the supplier is a SME (small, medium size enterprise);
- Whether the supplier is a non-governmental organisation that is value driven and surplus Monies are re-invested to further social, environmental or cultural objectives.

Information does not have to be published where the release would be contrary to the public interest, impede law enforcement, prejudice the legitimate commercial interests of a particular economic operator, might prejudice fair competition between suppliers.

You must also have regard to any guidance issued by the Cabinet Office relating to the form in which such information is to be published.

Contract formalities

46. There must be a signed written contract in place between the Council and the contractor before the supply, service or work is started. You must send the following documents to Legal Services to prepare and finalise the formal contract documents:
- Signed Director's Contract Award Report;
 - Invitation to Tender (including the terms and conditions);
 - Successful Contractor/Service Provider/Consultant tender submission;
 - Any other documents you wish to include in the contract
47. Signed, Sealed contracts will be listed in the Council's contract register and placed in the Council's Deeds Room and you will be forwarded a contract number for future reference. Contracts between £50,000 and £100,000 need to be signed by an Authorised Signatory or sealed in the presence of an Authorised Signatory. All contracts over £100,000 must be sealed in the presence of an Authorised Signatory.
48. If you want the contract to begin before the contract is signed or sealed, you should consult Legal Services. In exceptional circumstances, the Head of Legal Services may permit the contract to begin before the contract is signed.

Contract register

49. You must give details of the contract to the Procurement Team to be entered into the Contracts Register.

Part E: Contracts above EU values

If you want to award a contract in this range of values you must consult the Procurement Team and Legal Services. This process is governed by statutory rules and European Directives that are too extensive to set out in these Rules. The following Part is intended as summary guidance only.

It is important to note that the statutory rules supersede these Rules and contain their own exemptions.

No exemption can be granted by officers or members for exemption from the EU process unless the exemption is permitted by the statutory rules.

Identifying potential candidates

1. Contracts which are covered by the Regulations must be the subject of a 'call for competition' by publishing a contract notice in the Official Journal of the European Union ("OJEU").
2. In most cases the time allowed for responses or tenders must be no less than a set period, although some prescribed periods can be reduced where:
 - A prior information notice (PIN) was published sufficiently far in advance of the procurement or when accelerated procedures are used;
 - If the OJEU notice was submitted electronically in accordance with the requirements set out on the SIMAP website (see above);
 - Where authorities offer full and unrestricted access to tender documents (in accordance with specific requirements set out in the EU procurement regulations).

Process

3. **The Public Contracts Regulations 2015 (which can be viewed on the Cabinet Office website) set out schedules which include the types of works, services that are covered by the Regulations. These Regulations will apply in the following circumstances;**
 - (i) **For a contract relating to works with a total value of £5,336,937,322,012 and over;**
 - (ii) **For a contract relating to the supply of goods with a total value of £213,477,172,514 and over;**
 - (iii) **For a contract relating to services with a total value of £213,477,172,514 and over. However for services falling within Schedule 3 of the Regulations, the ~~full~~ Regulations will apply where the total contract value is £663,540 and over ~~750,000 euros (£625,050).~~**

Important to note that the thresholds stated are subject to changes on an two yearly basis, you must check with Legal Services and the Procurement Team in relation to under which services your proposed contract falls under.

Where the contract value of your contract is below the thresholds, this does not mean that you will be totally exempt from the Regulations, contact the Legal Services and Procurement Team for assistance.

4. **For contracts which are above the thresholds set out in this section, a standardised Pre-Qualification Questionnaire may be used when shortlisting potential bidders and/or assessing their financial and economic standing, technical capacity and ability, previous experience. Contact the Procurement Team or Legal Services for further advice on PQQ's.**

Choice of procurement procedure

5. Four award procedures are provided for under the EU procurement regulations:
- **Open Procedure**
All those interested may respond to the advertisement in the OJEU by tendering for the contract.
 - **Restricted Procedure**
A selection is made by use of a pre-qualification questionnaire (PQQ) of those who respond to the advertisement and only those selected are invited to submit a tender for the contract. This allows purchasers to avoid having to deal with an overwhelmingly large number of tenders.
 - **Competitive Dialogue Procedure**
Following an OJEU notice and a selection process, the Council enters into dialogue meetings with several bidders, to develop one or more suitable solutions for its requirements. During this process bidders are deselected at various stages before final tenders are called for. (A multi-stage and complex process which should not be used where Open or Restricted procedures could have been used).
 - **Negotiated Procedure**
The Council may select one or more persons with whom to negotiate the terms of the contract. An advertisement in the OJEU is usually required but, in certain circumstances, described in the Regulations, the contract does not have to be advertised in the OJEU. An example is when, for technical or artistic reasons or because of the protection of exclusive rights, only a particular person can carry out the contract. This procedure is used only exceptionally.
 - **Innovation Procedure**
This procedure can be used where the Council has identified a need for an innovative product, service or works that cannot be met by purchasing these from the market. A partnership can be set up with one or more partners with the aim of developing an innovative product, services or works. The partnership will need to be terminated as

the development progresses. The selection of bidders and process for negotiation will be in accordance with the Public Contracts Regulations.

6. Public authorities have a free choice between the open and restricted procedures. The competitive dialogue procedure is available where the contract cannot be awarded under open or restricted procedure. The negotiated procedure may only be used in the limited circumstances described in the EU procurement regulations.
7. Under restricted procedures, competitive dialogue and competitive negotiated procedures (those where a call for competition is required by advertising in the OJEU) there must be a sufficient number of participants in the process to ensure genuine competition, with a minimum of *five* for restricted procedures and *three* for competitive dialogue and negotiated procedures.

Specification evaluation and award criteria

8. In all other respects the process follows the steps set out in the earlier section on tendering and you are required to complete preparation of your paperwork before the tendering process begins. Whilst some of the paperwork can be standardised it is important that Legal Services and the Procurement Team will work with you to devise award criteria based upon your specification for the services that are being procured.

Where tender bids received appear to be abnormally low, you need to seek an explanation from the bidder or bidders. Once received you need to assess the information and you can only reject the tender where the responses provided do not satisfactorily set out the reasons for the low bid. Contact Legal Services for guidance.

Standstill and post tender formalities

9. Following the evaluation of the contract and before formally awarding the contract to the successful bidder there will be a mandatory standstill period. This period begins once you have notified the unsuccessful bidders of your decision and the reasons for the differing scores. This is known as the ‘Alcatel’ or “Standstill” period and is bound by strict rules. See points 11 and 13 below as to when the Alcatel letter must be sent out.
10. The standstill period allows for the unsuccessful bidders to seek any feedback on their bids and to challenge the procurement process. You should therefore have prepared in advance any information about the evaluation process, the reasons for the differing scores and why the bidder was unsuccessful before the award of the contract is notified to the bidders.

Governance

11. The contract must be awarded by an authorised signatory on behalf of the Council. Your Director can award a contract up to £500,000 in value upon receipt of a contract award report. You must prepare an award report to authorise the award of the contract which must

be sent to Legal Services, Procurement and Finance for approval before your Director signs off the report. The report must be signed by the Director or a senior officer with authority delegated from the Director. The Alcatel letter can be sent out at any time after your Director signs off the contract award report.

12. For contracts above £500,000 you will need to have a Key cabinet member decision notice (CMDN) approved by the relevant Cabinet member before award of the contract. All contracts of this value should also be on the Forward Plan. Contact the Governance team for further guidance.
13. The Key CMDN must be published in advance of being signed by the Cabinet Member. There is separate guidance on this process available from the Legal Services team. The Alcatel letter can only be sent out after the Cabinet Member has signed the Key CMDN. Once the Key CMDN has been published the bidders are likely to become aware of the successful bidder so you should aim to make them informally aware of the tender outcome and intention to issue the Alcatel standstill letter at the same time as the Key CMDN is sent for publication. Confirmation of the award should follow once the call-in period has expired.
14. All contracts above £100,000 must be sealed in the presence of an Authorised Signatory and, once sealed, will be retained by Legal Services within the Deeds Room.

Contract formalities

15. There must be a sealed written contract in place between the Council and the contractor before the supply, service or work is started. If this requirement may cause difficulties, you should consult Legal Services. In exceptional circumstances, Legal Services may permit the contract to begin before the contract is sealed and measures can be put in place to protect the Council's position in the interim.

You must send the following documents to Legal Services to prepare and finalise the formal contract documents:

- Signed Director's Contract Award Report/Key cabinet member decision notice;
- Invitation to Tender (including the terms and conditions);
- Successful Contractor/Service Provider/Consultant tender submission;
- Any other documents you wish to include in the contract

16. Signed, Sealed contracts will be listed in the Council's contract register and placed in the Council's Deeds Room and you will be forwarded a contract number for future reference.

Section 3 – Getting the Contract in Place

Where contracts are high value or high risk you should consult with your department's senior accountant or senior financial officer as to whether some form of security, such as a bond or parent company guarantee is required from the contractor

Bonds

1. A performance bond is a written guarantee provided to the Council by a contractor's bank or insurer. It requires the contractor to deposit a sum of money with the bank or the insurer and is therefore usually only suitable for high value or high risk contracts. If the contractor does not do what it has promised under the contract, the Council can claim from the bank or insurer the sum of money which is specified in the performance bond.
2. A performance bond is intended to protect the Council against the costs that arise from the contractor's failure to perform the contract. You must assess the need for the bond by considering the risks to the Council, including the:
 - complexity of the contract relating to delivery;
 - capabilities of suppliers, service providers or contractors;
 - financial standing and security of suppliers, service providers or contractors.
3. In limited circumstances it may be necessary to have an on demand bond (effectively a cash bond), however there is a significant cost to these and they should only be sought in limited circumstances and following legal advice.
4. You should consider whether a performance bond or any other form of security is required where;
 - a contract for works, goods or services is estimated to exceed the EU threshold or
 - where it is proposed to make stage or other payments in advance of receiving the whole of the works, services or supplies
5. Should a performance bond or other form of security be required, you must identify this in the tender documentation. Contact the Contracts and Procurement Team or Legal Services for a template version of the performance bond.
6. You should not allow the contractor to commence the contract for the works, services or supplies until the bond has been provided to the Council.

Parent company guarantees

7. A parent company guarantee could be requested from the contractor as an alternative form of security to a performance bond but only where the contractor has a parent company.

8. A parent company is a company which owns a number of companies (known as subsidiaries). You should seek advice from the Procurement Team or Legal Services if you intend to request a parent company guarantee in any tender.

9. There are other lesser used forms of security that can be requested against the contract, such as cash, title deeds, debentures and legal charges. Please contact the Procurement Team or Legal Services for further advice if you need to consider these.

Contract documents

There are many different forms of standard contract. These are most frequently found in the construction industry (i.e. for works contracts) but others are also available.

The Legal Services team have knowledge of most standard forms of contract and also hold a standard set of terms and conditions which can be tailored to meet any forms of works, goods or services contract. These take account of the specific needs placed upon local government contracts e.g. freedom of information requests for contract documents and auditing obligations.

Requests for standard clauses and to discuss specific contractual requirements can be made by contacting Legal Services.

Section 4 – Changes to the Contract

This section sets out what you must do if

- you are unable to comply with any of the requirements of these Rules, or
- there is a change to the contract e.g. additional works have been identified after the contract has begun.

It is very important that you follow correct governance processes to authorise any changes to the contract or these Rules. In almost all cases you will require approval from your Director and other senior officers within the Council.

The Head of Legal Services is responsible for monitoring adherence to these Rules. Failure to obtain the correct authorisation at the appropriate time to deviate from these Rules may mean that you are in breach of your employment contract and oblige the Head of Legal Services to report repeated breach of the Rules to the Council.

Exemptions

1. It is the Council's policy that these Contract Rules should be complied with at all times. However, the Council recognises that circumstances may exist when it is not possible or desirable to comply with these Rules. On those occasions you may apply for an exemption from any or all of these Rules.
2. The fundamental principles of exemptions are that:
 - they should be used only in exceptional circumstances;
 - they are granted entirely at the discretion of the Corporate Director Resources, in consultation with the Head of Legal Services,
 - they should always be sought in advance of any purchasing as there is a general presumption that retrospective applications will not be approved, and
 - there is no automatic right to an exemption.
3. The Corporate Director Resources is accountable for giving appropriate approval to all exemptions and a record is kept of all those granted which is open to public inspection.
4. All exemption requests must be made in writing supported by justification for your application.

5. An exemption under this section **can never** be used where the total value of the contract exceeds the EU threshold. There are specific statutory exemptions which apply to contracts tendered under the EU process and you should always seek legal advice on these.

When may an exemption be allowed?

6. An Exemption may be allowed when:
- You want to obtain quotations or tenders from fewer bidders than these Rules require (including a single bidder) because they are the only suppliers which can provide the services or goods or works you want to purchase;
 - You are working in partnership with another public sector body and you are satisfied that their procurement rules have been complied with in the letting of the contract;
 - You want to extend or renew an existing contract which does not have provision for an extension and where a change of supplier would cause:
 - disproportionate technical difficulties;
 - excessive cost; and/or
 - significant disruption to services.
7. In all cases an exemption cannot be approved where the cost of the extension or contract exceeds the EU threshold.

Exemption procedure

8. To apply for an Exemption, you should complete an Exemption Report.
9. The Exemption Report should set out clearly the grounds on which you are applying for the Exemption and must specify which of the reasons listed above apply.
10. If there is information which you wish to keep confidential and not disclose to the public you should also complete an exempt annex. However, all local authorities are increasingly expected to disclose information to the public on the grounds of transparency and accountability. The Council will be allowed to withhold information only in exceptional circumstances where the interests of the Council or others may be severely damaged or compromised by disclosure.
11. The completed exemption report should be sent to Legal Services, Procurement and Finance for approval.
12. Once the required approvals have been obtained you must send the report to the Head of Legal Services and the Corporate Director Resources for formal approval of the exemption. Electronic approval will be sufficient.

13. The Corporate Director Resources is required to keep a register of approved exemptions.
14. In urgent circumstances, contact must be made with the Head of Legal Services and the Corporate Director Resources **before** taking entering any contract, to obtain an “in principle” decision. This means that, unlike usual procedures, the decision to award will follow after the contract has been awarded. Verbal authority given by the Executive Director, Resources will mean that the correct authority has been given for the contract, even though the paperwork will be retrospective.

Retrospective exemptions

15. An exemption to any of the Rules should never be sought retrospectively but exceptions to this principle will be allowed where:
 - It has been necessary to act urgently because of an unforeseen emergency which involves immediate risk of injury or damage or to prevent serious disruption to services.
 - it is necessary for an officer in Children’s Services or Adult Social Care to act immediately to secure care for any vulnerable person.
 - it is necessary to act urgently to secure a supply of goods eg Westcombe Engineering, where commercial offers are time limited and represent best value for the Council.
16. In both cases you should seek an ‘in principle’ decision from the Executive Director, Resources and the Head of Legal Services where possible, and the cost of the immediate action should not exceed the EU threshold. An exemption report should be completed as soon as reasonably possible after the contract has begun.

Assigning/Novating contracts

17. Assignment is the transfer of the benefit of contract to another party. The contract should detail the circumstances in which a contract can be assigned but if it does not you will need to consult Legal services on the process. Novation is the transfer of the rights, obligations and liabilities of an original party to an existing contract to a new party. You should contact Legal services on the form of the contract that should be used for the novation, which is usually in the form of a deed.
18. Where a contract is required to be assigned or novated you must first calculate the total value of the contract to determine the correct process. A contract may be assigned/novated, without the need to carry out a new procurement, where;
 - (i) There is reference to such a change within the tender documents; or

(ii) The new contractor is replacing the existing contractor following a corporate restructure, takeover, merger, acquisition or insolvency, and as long as the new contractor fulfils the criteria upon which the existing contractor was selected (ie technical, financial capability).

19. Where a contract has a total value between £50,000 and £500,000 the assignment/novation will need to be approved by the following officers:
- Head of Legal Services; and
 - Your Director (or if authorised, the Head of Service / Assistant Director)
20. Where a contract has a total value of more than £500,000 the assignment/novation will need to be approved by the officers listed above and:
- a credit check on the proposed contractor that the contract is to be assigned to have been carried out by Financial Services; and
 - a Cabinet Member Decision Notice authorising the assignment/novation has been obtained; and
 - a formal deed/notice of assignment, to be prepared by Legal Services, has to be entered into by the parties

Varying contracts

21. Variations of contract typically comprise:
- change in price, or
 - change in service delivery or goods or works leading to a change in price
22. If the variation looks as if the original value of the contract is likely to be exceeded, the procedure for obtaining approval to the variation is as follows:

22.1 Non-EU procured contracts

- Increase is less than £50,000

The project/contract manager or officer must obtain approval to the increase in line with the authority listed in the quick reference guide.

- Increase is more than £50,000

In addition to obtaining the authority listed in the quick reference guide, the project/contract manager or officer must inform the Head of Internal Audit immediately. This means that as long as the contract as varied is still under £500,000, it can be authorised by the relevant officer(s) referred to in the quick

reference guide (subject to having informed Internal Audit). If the variation takes the contract value over £500,000 or if the original contract was over £500,000 and a key cabinet member decision notice was obtained for the contract, a further key cabinet member decision notice need not be obtained for the variation, unless Legal Services consider such a decision should be obtained.

The above is subject to;

(i) The variation not exceeding the EU threshold value for the works, services, supplies (ie accumulated value including the value of the variation) and;

(ii) The variation is lower than 10% of the initial contract value for services, supplies or 15% of the initial contract value for works.

22.1 EU procured contracts

Contact Legal Services for advice on whether the variation is likely to be treated as a new contract, requiring it to be re-tendered. If the advice from Legal Services is that the variation is unlikely to be treated as a new contract, the project project/contract manager or officer must follow the procedure outlined in the second bullet point of paragraph 22 above.

Section 5 – Ending the Contract

Terminating contracts

1. Where a contract is required to be terminated, other than by it expiring, seek advice from Legal Services.
2. Where a contract has a total value of between £50,000 and £500,000 the termination will need to be approved by the following officers:
 - Head of Legal Services; and
 - Your Director (or if authorised, the Head of Service / Assistant Director)
3. Where a contract has a total value of more than £500,000 the termination will need to be approved by the officers listed above and additionally
 - a Cabinet Member Decision Notice must authorise the termination and;
 - a termination notice must be issued to the contractor by Legal Services

Section 6 – Explanations

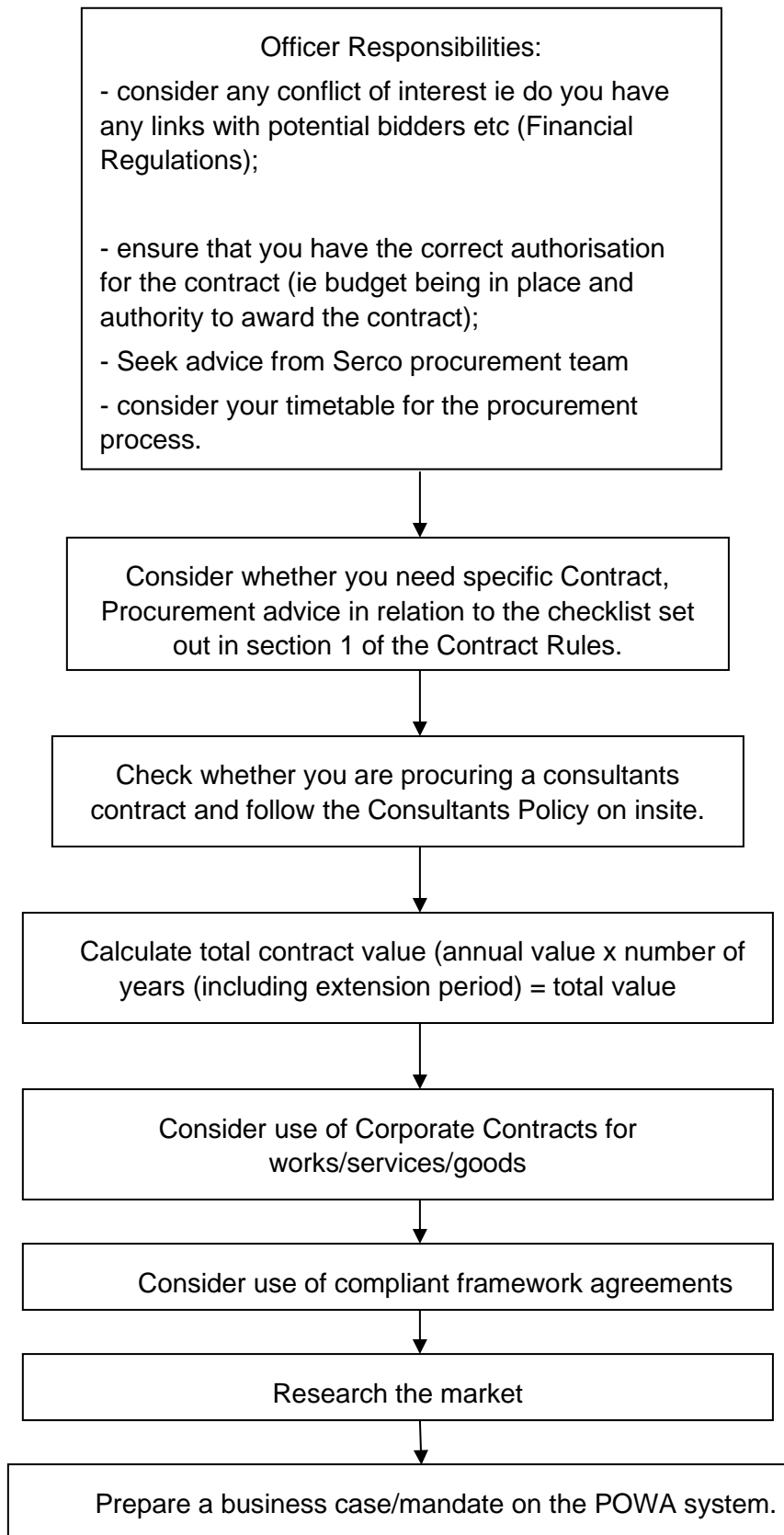
Glossary

Key terms in this section	Meaning
Authorised Signatory	Means the Chief Executive, Corporate Director Resources, Head of Legal Services (or delegated officers in Legal Services).
Business Case	A document that sets out the rational for undertaking a project and its costs, risks and benefits populated on POWA, the council's project management system.
Constitution	<p>The Council's constitutional document which;</p> <ul style="list-style-type: none"> - allocates powers and responsibility within the Council; - sets out delegations for its Executive including the cabinet members and delegation to officers; -sets out the rules of procedures, codes and protocols.
Delegated Authority	The process under the Constitution which sets out what senior officers of the Council are entitled to do in the Council's name e.g. to enter contracts. Most Director's will have delegated some of these powers to Heads of Service.
E-Sourcing	The researching and gathering of product or service information by electronic means, mainly by internet or email use.
EU threshold	The financial limit above which all tendering must follow a statutory procedure governed by EU directives. It applies to all public works contracts, public supply contracts and public service contracts which have a value <u>ex</u> cluding VAT estimated to be no less than the pre-established thresholds. The thresholds are recalculated by the European Commission every two years. See the Quick Reference Guide for the threshold amounts for the works, goods and services.
Financial Regulations	The regulations outlining the officer's responsibilities relating to financial matters.

Forward Plan	A forward plan is a list of published forthcoming key decisions to be taken during the following three months.
Framework Agreement	A framework is an agreement with suppliers to establish terms governing contracts that may be awarded during the life of the agreement. In other words, it is a general term for agreements that set out terms and conditions for making specific purchases (call-offs).
Key Decision	Any spend over £500k will be a key decision and the procedures for a key decision must be followed.
OJEU	Official Journal of the European Union. Contracts that are above the EU threshold are required to be advertised by placing a notice in the journal.
Procurement Strategy	A strategy document setting out the Council’s approach to procurement and priorities for the next few years.
Purchase order	The order placed on the Council’s financial management software system which commits funds to the contract.
State aid	State aid is a European Commission term which refers to forms of assistance from a public body or publicly-funded body, given to undertakings engaged in economic commercial activity on a selective basis, with the potential to distort competition and affect trade between member states of the European Union.

Flowcharts

Beginning the process – Flowchart



Is this a contract to buy works, services or goods?

No

Part 4, Section 10 – Contr

Appendix B
Contract Regs. But
Financial Regs and
other rules apply

Yes

Calculate the value of the contract to find out which process you need to follow.

Ensure you have carried out all your investigations and sought advice from Serco procurement team

Contract Under £5k

Contract between £5k - £50k

Contract between £50k and applicable EU Threshold, services (£173,934) or 750,000 euros for services falling under Schedule 3, works (£4,348,350) Supplies (£173,934)*

Contract over EU threshold

- Obtain one quote plus in-house bid (if relevant);
- Confirmation of terms in writing

Seek advice from Legal Services and Procurement

Consider whether Pre-qualification questionnaire is required

Yes

No

- Use Standardised PQQ
- Despatch PQQ

Prepare Invitation to Tender document to include:

- Tendering certificates;
- Instructions to Tender;
- Specification;
- Contract Terms;
- Award procedure and criteria

Obtain Quote:

- under a corporate contract or;
- a framework agreement; or
- from a supplier
- For contracts over £25k place advert on Contracts Finder within 24 hours

Advertise ITT (including on Contracts Finder within 24 hours)

Despatch ITT

Submission, Receipt and Opening of Tenders

Evaluate and Award Tender

Approval to Award Contract

Invitation to Quote to include:

- the specification;
- payment provisions;
- Council's termination rights;
- Key time/times when contract is to be performed

Obtain written record of quote (letter or email)

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