

# **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;

- 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 its own departments;
  - (ii) The entity carries out more than 80% of its 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

Israr Ahmed Tel: 452326

Alex Maxey Tel: 452325

Serco Procurement Team

[buyingsupport@peterborough.gov.uk](mailto: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
<b>Contracts under £25K</b>	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	
<b>Contracts between £25K &amp; £50K</b>	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
<b>Contracts between £50K and EU threshold</b> <b>(£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)</b>	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><b>Contracts over EU threshold</b>  <b>(£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)</b></p>	<p>EU process (seek procurement and legal advice including advice on social improvements for services contracts)</p>	<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>	<p>Formal contract approved by Legal Services</p>	<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><b>Contracts subject to EU process and over £500K</b>  <b>(Applies to goods, services and works contracts over £500K)</b></p>	<p>Apply the relevant process above</p>	<p>For goods and services: Only statutory exemptions from the EU process are permitted. Officers cannot provide an exemption</p>	<p>Key Cabinet Member Decision Notice (CMDN) signed by the Cabinet member</p> <p>Decision on Forward Plan</p>	<p>Formal contract approved by Solicitor to Council</p>	<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;

- 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



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

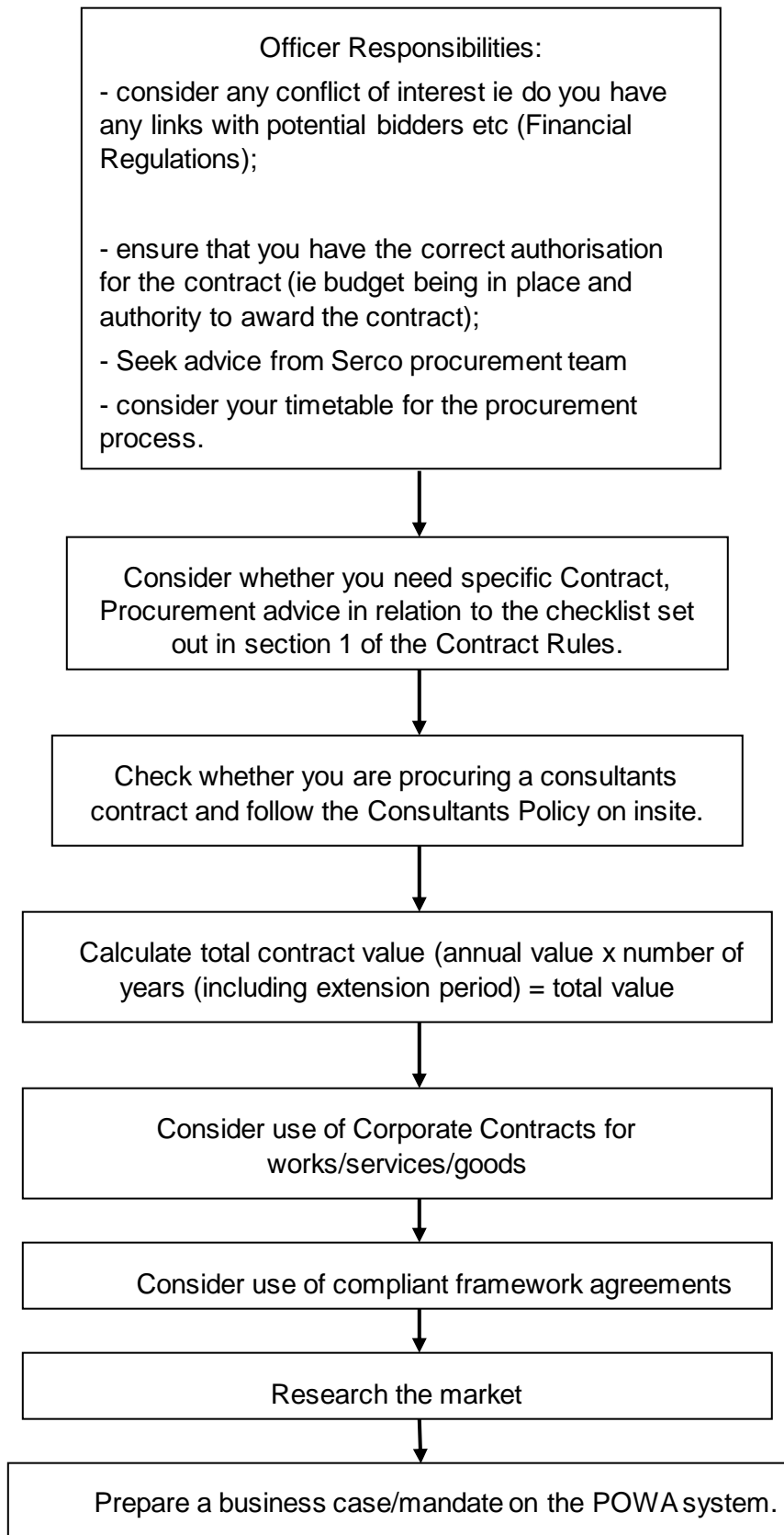
### Glossary

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"> <li>- allocates powers and responsibility within the Council;</li> <li>- sets out delegations for its Executive including the cabinet members and delegation to officers;</li> <li>-sets out the rules of procedures, codes and protocols.</li> </ul>
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.

<p>Forward Plan</p>	<p>A forward plan is a list of published forthcoming key decisions to be taken during the following three months.</p>
<p>Framework Agreement</p>	<p>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).</p>
<p>Key Decision</p>	<p>Any spend over £500k will be a key decision and the procedures for a key decision must be followed.</p>
<p>OJEU</p>	<p>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.</p>
<p>Procurement Strategy</p>	<p>A strategy document setting out the Council’s approach to procurement and priorities for the next few years.</p>
<p>Purchase order</p>	<p>The order placed on the Council’s financial management software system which commits funds to the contract.</p>
<p>State aid</p>	<p>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.</p>

**Flowchart**

Beginning the process – Flowchart





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