

## 1 CONTRACT PROCEDURE RULES

This section 19 sets out the Council's Contract Procedure Rules, which govern how the Council purchases goods and services.

Capitalised terms used in this section 19 are as defined in section 2.2 of the Constitution and, where applicable, in the Financial Procedure Rules in section 18.

### 1.1 What are the Contract Procedure Rules?

1.1.1 The Contract Procedure Rules outline the process to be followed to promote good purchasing practices within the Council, ensure public accountability, secure value for money, and deter corruption. Following the Contract Procedure Rules is the best defence against allegations that a purchase has been made incorrectly or fraudulently and the best way to demonstrate cost-effectiveness.

1.1.2 A Responsible Officer must comply with these Contract Procedure Rules when making any purchase. These Contract Procedure Rules lay down the minimum requirements applicable to a purchase and Responsible Officers should note that a more thorough procurement procedure may be appropriate for a particular purchase. Strategic Commissioning & Procurement will provide advice on when this is the case.

These Contract Procedure Rules form an essential part of the Council's Constitution, and where these Contract Procedure Rules apply, compliance is mandatory. All Responsible Officers should ensure that they are familiar with these Contract Procedure Rules. Non-compliance with these Contract Procedure Rules is a disciplinary matter.

1.1.3 Where reference is made in these Contract Procedure Rules to the Procurement Regulations<sup>10</sup>, those regulations should be referenced and complied with. The Procurement Regulations are not explicitly written into the Constitution. Responsible Officers should seek further guidance from Strategic Commissioning & Procurement and/or Legal Services if they are unsure about the application of the Procurement Regulations.

1.1.4 **These Contract Procedure Rules apply to all purchases (i.e., all spend) made by the Council, whether a formal contract is entered into or not.**

### 1.2 How are the Contract Procedure Rules organised?

The Contract Procedure Rules are organised into the following sections:

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<sup>10</sup> [The Public Contracts Regulations 2015](#)

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## **A – INTRODUCTION**

### **PURPOSE OF CONTRACT PROCEDURE RULES**

#### **1.3 What is the purpose of these Contract Procedure Rules?**

- 1.3.1 The Council is required to set out Contract Procedure Rules that govern how they procure contracts for the supply of goods and services and for the execution of works, which provide for a mechanism by which the Council will ensure that contracts are tendered competitively, and that the Procurement Regulations, and other applicable legislation, is complied with .
- 1.3.2 The intention of these Contract Procedure Rules is to ensure that the Council:
- a obtains Value for Money and Best Value;
  - b avoids and prevents corruption or the suspicion of it;
  - c is fair and equitable in the treatment of all suppliers;
  - d is transparent in how it conducts its procurement activities in accordance with the Procurement Regulations;
  - e seeks to reduce disadvantage, advance equality and promote community cohesion as defined in the Equality Act 2010;
  - f makes every effort to promote local businesses, including small and medium-sized enterprises (SME);
  - g promotes Social Value<sup>11</sup>; and
  - h supports the Council's corporate and service aims and policies (to the extent compatible with the above).
- 1.3.3 Where a person who is not an Officer is required to make purchasing decisions or manage contracts on behalf of the Council (for example, agency staff), the contract engaging that person should include a condition that these Contract Procedure Rules apply to that person as if they were an Officer.
- 1.3.4 Unless specific grant terms require otherwise, these Contract Procedure Rules apply to any procurement made using funds received from external sources. Where grant conditions prescribe a particular procurement route, that route will be followed (provided that it is compliant with the Procurement Regulations and other applicable legislation).
- 1.3.5 Any breach or non-compliance with these Contract Procedure Rules should be dealt with in accordance with section 19.4.

### **BREACH OF CONTRACT PROCEDURE RULES**

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<sup>11</sup> [Public Services \(Social Value\) Act 2012](#)

#### **1.4 What are the consequences of breaching these Contract Procedure Rules?**

- 1.4.1 Breach of these Contract Procedure Rules is very serious and will constitute a disciplinary matter. Save where a valid waiver or exemption has been applied, any failure to comply with these Contract Procedure Rules will be treated as a breach.
- 1.4.2 It will be the responsibility of all Officers to address non-compliance swiftly and in the most appropriate way according to the circumstances.
- 1.4.3 Any breach of, or non-compliance with, these Contract Procedure Rules must, on discovery, be reported immediately to the Internal Audit Manager acting on behalf of the Chief Finance Officer. The Internal Audit Manager shall, after taking legal advice and consulting Strategic Commissioning & Procurement, decide whether each reported breach or noncompliance presents a significant risk of harm to the Council's interests and, if satisfied that such risk exists, shall undertake any necessary investigation and report the findings to the Chief Finance Officer.
- 1.4.4 Officers may also raise concerns relating to breach or suspected breach of, and non-compliance with, these Contract Procedure Rules anonymously in line with the Council's [Whistleblowing Policy and Procedure](#).
- 1.4.5 Officers should remain alert to fraud throughout the procurement life cycle and any concerns of fraud or corruption must be reported at the earliest opportunity to the Head of Strategic Commissioning & Procurement by emailing [procurement@middlesbrough.gov.uk](mailto:procurement@middlesbrough.gov.uk). They will decide whether the matter should be escalated to the Internal Audit Manager, acting on behalf of the Chief Finance Officer.
- 1.4.6 Officers must follow the Officer Code of Conduct in respect of any procurement activity. Failure to comply with the Officer Code of Conduct or these Contract Procedure Rules may constitute a disciplinary matter that may be pursued, as appropriate, in accordance with the Council's disciplinary policy.

#### **1.5 What is the role of Councillors in procurement activities?**

- 1.5.1 Councillors are not permitted to take part in the procurement process, and they must ensure that their actions do not compromise or impact on due process in relation to any Council procurement.
- 1.5.2 Concerns related to Councillor intervention in procurement activities may be subject to Standards Committee investigation.

#### **1.6 How are breaches of these Contract Procedure Rules reported?**

Reports on the number of confirmed breaches of these Contract Procedure Rules are to be sent by the Head of Strategic Commissioning & Procurement to the Chief Finance Officer on a quarterly basis.

#### **EMERGENCY SITUATIONS**

#### **1.7 How do these Contract Procedure Rules apply in emergency situations?**

- 1.7.1 Where the Chief Executive exercises their power under section 6.40.1 of the Constitution in an emergency, and a contract cannot be awarded under a competitive process pursuant to these Contract Procedure Rules, **and the emergency has not arisen due to an act or omission of the Council**, the emergency process set out in this section 19.7 may be applied.
- 1.7.2 This section 19.7 also applies where, in the opinion of the Chief Executive, there is an immediate and extreme risk which could not have reasonably been foreseen, including (but not limited to):
- a a major disaster involving immediate risks to persons or property; and/or
  - b an event or occurrence which is creating serious disruption to Council services; and/or
  - c an event or occurrence resulting in significant financial loss to the Council.
- 1.7.3 In an emergency, the Contract Procedure Rules will be temporarily disapplied for a proportionate period of time (to be determined by the Chief Executive in consultation with the Mayor) so that the Council may respond to the immediate risk. Once the immediate risk has been mitigated, these Contract Procedure Rules will apply to any follow-up actions.
- 1.7.4 A report must be prepared for the Chief Finance Officer setting out the justification for the action taken. If they consider it necessary, the Chief Finance Officer may require that report to be submitted to the next meeting of the Executive for approval.

## **AMENDMENT AND MORE INFORMATION**

### **1.8 How are these Contract Procedure Rules amended to reflect changes in legislation?**

The Chief Finance Officer shall have the power to make technical amendments from time to time to make these Contract Procedure Rules consistent with legal requirements, changes in Council structures and personnel, and best practice, after consultation with the Head of Paid Service, the Monitoring Officer, and the Chair of the Council.

### **1.9 Where can I find more information and guidance about the Council's procurement procedures?**

In addition to these Contract Procedure Rules, the Council has in place further information and guidance about its procurement procedures.

## B - DEFINED TERMS

Where capitalised terms are used in this section 19, they will have the meanings set out below. For the avoidance of doubt, terms defined in section 2 of this Constitution also apply to this section 19.

“Above Threshold Procurement”	a procurement that is above the relevant Procurement Threshold;
“Award Criteria”	the criteria by which the successful Quotation or Tender is to be selected (see section 19.48);
“Award Procedure”	the procedure for awarding a contract;
“Best Value”	the duty placed on the Council to obtain a competitive price for goods, services and works of appropriate quality, in line with statutory duties <sup>12</sup> ;
“Bidder”	any person who asks or is invited to submit a Quotation or Tender;
“Bond”	an insurance policy. If the Contractor does not do what is has promised under contract with the Council, the Council can claim from the insurer the sum of money specified in the Bond (often 10% of the contract value). A Bond is intended to protect the Council against a level of cost arising from the Contractor’s failure;
“Competitive Dialogue”	a procurement process that allows the Council to enter into a dialogue with Bidders until a solution is found to the Council’s requirement <sup>13</sup> ;
“Competitive Procedure With Negotiation”	a procurement process that allows the Council to negotiate with Bidders after an Invitation to Tender is issued, which also allows the Council to reserve the right not to negotiate where a Bidder meets its requirement <sup>14</sup> ;
“Concession Contract”	as defined in section 19.92;
“Contracting Decision”	any of the following decisions: <ul style="list-style-type: none"><li>• composition of Approved Lists;</li><li>• withdrawal of Invitation to Tender;</li><li>• whom to invite to submit a Quotation or Tender;</li><li>• Shortlisting;</li><li>• Contract Award; or</li></ul>

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<sup>12</sup> [Local Government Act 1999](#)

<sup>13</sup> [The Public Contracts Regulations 2015, Regulation 30](#)

<sup>14</sup> [The Public Contracts Regulations 2015, Regulation 29](#)



- any decision to terminate a contract;

“Contractor”		a successful Bidder with whom the Council has or intends to enter into a contract;
“E-tendering Portal”		the Council’s electronic tendering system used for publishing Invitations to Tender and Invitations to Quote and for submission of bids by suppliers;
“Exemptions Annex”		the Annex held by Strategic Commissioning & Procurement which sets out the application of exemptions to these Contract Procedure Rules;
“Framework”		an agreement under which a long-term relationship is established between local authorities (or other public sector bodies) and approved suppliers;
“Government Procurement Agreement”		the successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the European Economic Area are: USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore;
“In-house Test”	Preferred	the Council’s internal measure for determining if the Council’s requirement would be best delivered by an internal mechanism, e.g., internal Service area or Council owned company, rather than through a competitive process;
“Innovation Partnership”		a procurement process that allows the Council to procure research and development and a product or service in a single procurement <sup>15</sup> ;
“Invitation to Quote”		invitation to submit a Quotation in the form required by these Contract Procedure Rules;
“Invitation to Tender”		invitation to submit a Tender in the form required by these Contract Procedure Rules;
“Low Value Contracts Threshold”		the threshold specified in Regulation 109(2)(c)(ii) of the Procurement Regulations <sup>16</sup>
“M.E.A.T.”		award criteria that considers more than just price; which could include price, service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, quality, relevant environmental considerations, aesthetic and functional characteristics (including security and control features), safety, after-sales service, technical assistance and any other relevant matters;
“Sub-contractor”		a person engaged by a Contractor to discharge any part of a contract with the Council;

<sup>15</sup> [The Public Contracts Regulations 2015, Regulation 31](#)

<sup>16</sup> [The Public Contracts Regulations 2015, Regulation 109](#)

“NEPRO Solution”	a managed service solution that provides a cost-effective and compliant route for the procurement of professional services by the public sector;
“Non-Commercial Considerations”	<ol style="list-style-type: none"> <li>1. The terms and conditions of employment of a Bidder’s workers or the composition of, arrangements for the promotion, transfer or training of, or other opportunities afforded to, their workforce;</li> <li>2. Whether the terms on which Bidders contract with their Sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self employed persons of their services only;</li> <li>3. Any involvement of the business activities or interests of Bidders with irrelevant fields of Government policy;</li> <li>4. The conduct of Bidders or their workers in industrial disputes between them or any involvement of the business activities of Bidders in industrial disputes between other persons;</li> <li>5. The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, Bidders;</li> <li>6. Any political, industrial or sectarian affiliations or interests of Bidders or their directors, partners or employees</li> <li>7. Financial support or lack of financial support by Bidders for any institution to or from which the Council gives or withholds support;</li> <li>8. Use or non-use by Bidders of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959;</li> </ol>
“Responsible Officer”	the Officer designated by the relevant Head of Service to deal with a particular contract and/or spend;
“Open Procedure”	a procurement process where any Bidder may submit a Tender and there is no pre-qualification process <sup>17</sup> ;
“Parent Company Guarantee”	a contract which binds the parent company of a subsidiary company as follows: If the subsidiary company fails to do what it has promised under a contract with the Council, it can require the parent company to do so instead;
“Procurement Regulations”	The Public Contracts Regulations 2015 <sup>18</sup> as supplemented and amended from time to time;

<sup>17</sup> [The Public Contracts Regulations 2015, Regulation 27](#)

<sup>18</sup> [The Public Contracts Regulations 2015, Regulation 5](#)

“Procurement Threshold”	the thresholds set out in the Procurement Thresholds Annex;
“Prospective Bidder”	any persons who asks or is invited to submit a Quotation or Tender;
“Quotation”	an indication by any person of a price for the execution of work or the supply of goods, materials or services (without the formal issue of an Invitation to Tender);
“Quotation System”	the E-tendering Portal quotation system;
“Relevant Contract”	contracts to which these Contract Procedure Rules apply (see section 19.12);
“Restricted Procedure”	a procurement process where any Bidder that meets the pre-qualification criteria may submit a Tender <sup>19</sup> ;
“Shortlisting”	where Bidders are selected: <ul style="list-style-type: none"> <li>• to submit a Quotation or Tender; or</li> <li>• to proceed to final evaluation;</li> </ul>
“Social Value”	the duty on the Council to consider economic, social and environmental well-being when commissioning a public service <sup>20</sup> ;
“Standing List”	a list of approved suppliers able to perform contracts to supply goods or services of particular types;
“Tender”	a written offer made by any person (following an invitation from the Council) which can be accepted by the Council to form a binding contract;
“Total Value”	<p>The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal, whether or not it comprises several lots or stages, to be paid or received by the Council or a Service within the Council. The Total Value shall be calculated as follows:</p> <ul style="list-style-type: none"> <li>• where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period;</li> <li>• where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months;</li> <li>• for feasibility studies: the value of the scheme or contracts which may be awarded as a result;</li> </ul>

<sup>19</sup> [The Public Contracts Regulations 2015, Regulation 28](#)

<sup>20</sup> [Public Services \(Social Value\) Act 2012](#)

- for Sub-contractors: the Total Value shall be the value of that part of the main contract to be fulfilled by the Sub-contractor;

“Value for Money”

the optimal use of resources to achieve the intended outcomes based on economy, efficiency and effectiveness.

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## **C – ROLES AND RESPONSIBILITIES**

This section sets out the specific roles and responsibilities of Officers and Members in relation to procurement.

### **OFFICER RESPONSIBILITIES**

#### **1.10 What are the responsibilities of Officers in relation to purchasing?**

1.10.1 Officers must ensure that:

- a they comply with:
  - i these Contract Procedure Rules;
  - ii the Financial Procedure Rules;
  - iii the Officer Code of Conduct; and
  - iv all applicable legal requirements in force from time to time.
- b any purchasing activity they undertake supports the Council's strategic aims and objectives;
- c appropriate records of procurement activities are kept as required by section 19.69.
- d advice is sought from Strategic Commissioning & Procurement;
- e appropriate supplier due diligence is completed;
- f proper Tender processes are followed in accordance with procedures set out in Invitations to Tender;
- g they have declared any relevant conflict of interest in relation to a purchase;
- h the correct authorisation and approvals are obtained in accordance with the Scheme of Delegations and the Council's formal decision-making processes; and
- i where appropriate, any agent, consultant or contractual partner acting on behalf of the Council complies with the above.

1.10.2 Chief Officers must ensure that their staff comply with section 19.10.

1.10.3 Chief Officers must ensure that their staff complete the Council's Corporate Contract Register for all contracts entered into by their Service Area. Heads of Service must ensure that their staff notify Strategic Commissioning & Procurement of all contracts progressed by their Service to enable Strategic Commissioning & Procurement to enter the relevant information on the Council's contracts register.

### **RESPONSIBILITIES OF SPECIFIC MEMBERS AND OFFICERS**

#### **1.11 What are the specific responsibilities of Officers and Members?**

The specific responsibilities of Officers and Members in relation to these Contract Procedure Rules are set out in Annex 1 to this section 19.

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## **D – APPLICATION OF CONTRACT PROCEDURE RULES**

### **RELEVANT CONTRACTS**

#### **1.12 To which Council contracts do these Contract Procedure Rules apply?**

**1.12.1 These Contract Procedure Rules apply to every Relevant Contract entered into by or on behalf of the Council** (e.g., by agency staff, agents or consultants), which includes contracts for:

- a the purchase of all goods or materials;
- b the purchase of services, including professional services, interim and agency staff;
- c the purchase/order of works; and
- d contract management of third party spend.

**1.12.2** Where a contract or sub-contract covers works and the supply of goods, services and/or material, it will be treated as a works contract if more than 50% of its total value relates to works.

#### **1.13 When do these Contract Procedure Rules not apply?**

**1.13.1** These Contract Procedure Rules do not apply to the following:

- a procurement activity carried out by Council maintained school under their own delegated budget and/or a school's own formal procurement and contractual rules;
- b legal charges, awards and disbursements (including all associated costs and fees) in connection with any and all legal proceedings governed by Civil Procedure rules;
- c contract offers of employment which make an individual an employee of the Council;
- d settlement of insurance claim compensation;
- e treasury transactions as outlined in the Council's Treasury Management Strategy;
- f non-contractual funding arrangements (including grant agreements under which the Council makes a grant to a third party, provided that the terms of the funding arrangements do not constitute a contract, and a direct award can be made following approved Council grant processes). For the avoidance of doubt, where the Council is using grant monies itself or passing them onto a third party, these Contract Procedure Rules will apply (along with any applicable grant conditions);
- g specific licensing requirements (for example, a television licence or public entertainment licence) or subscriptions to national organisations (for example, the Local Government Association);
- h contracts for the execution of either works (or provision of goods, services or material) where the Council has no discretion whether the works are required or who must deliver them (for example, works to be provided by a statutory undertaker);

- i services with a national remit where there are requirements to comply with purchasing arrangements set out by a funding body;
  - j appointment of external auditors outside the Council's control;
  - k appointment of barristers or legal firms where, in the opinion of the Monitoring Officer, urgent advice is required to protect the interests of the Council;
  - l disposal goods and/or materials deemed surplus to the Council's needs.
- 1.13.2 The above list is not exhaustive. If an Officer is unsure whether these Contract Procedure Rules apply in any specific circumstances, they should seek advice from Strategic Commissioning & Procurement.
- 1.13.3 Officers should seek advice from Strategic Commissioning & Procurement on the application of these Contract Procedure Rules to any proposed direct award of a contract to a Council-owned Company.

## **EXEMPTIONS**

### **1.14 When may the provisions of these Contract Procedure Rules be waived?**

- 1.14.1 Chief Officers may request authorisation from the Chief Finance Officer to waive, suspend or change any provision of these Contract Procedure Rules in accordance with this section 19.14. Where an exemption applies, section 1.43 will not apply, and the Council will be permitted to negotiate directly with one or more suppliers.
- 1.14.2 Full details of how exemptions apply are contained in the Exemptions Annex.

### **1.15 What is the process for requesting an exemption?**

- 1.15.1 The relevant Chief Officer must complete a Request for Exemption from Procurement Procedures Form, which must be signed by the relevant Head of Service, the Chief Finance Officer and the Monitoring Officer, and then submitted to the Head of Strategic Commissioning and Procurement.
- 1.15.2 Before completing a Request for Exemption from Procurement Procedures Form, Chief Officers / Heads of Service should agree with Strategic Commissioning & Procurement the basis on which they are applying for an exemption.
- 1.15.3 The Chief Finance Officer and the Head of Strategic Commissioning & Procurement reserve the right to refuse any application for an exemption. Where an exemption relies on an exception in the Procurement Regulations, it will be rejected unless evidence is provided to demonstrate that the exception applies.

### **1.16 How are exemptions recorded?**

The Head of Strategic Commissioning & Procurement will maintain a register of all approved exemptions and will monitor and report the use of exemptions for management control purposes.



### **1.17 When may an exemption not be used?**

1.17.1 An exemption may not be used for Above Threshold Procurements.

1.17.2 **Any attempt to seek retrospective approval of an exemption will be rejected and will be treated as a potential breach of these Contract Procedure Rules.**

1.17.3 **Exemptions should not be used to circumvent these Contract Procedure Rules.**

### **1.18 What action must be taken in respect of an approved exemption?**

If an exemption is approved, Chief Officers must:

- a ensure that a formal contract is entered into;
- b undertake appropriate due diligence on the relevant supplier and proportionate contract management during the life of the contract;
- c ensure that appropriate approval to award the contract has been given in accordance with the Scheme of Delegations;
- d ensure that the value of the contract does not exceed the financial threshold for an Above Threshold Procurement and that no contract extension is sought.

## E – PROCUREMENT THRESHOLDS

This section sets out how Procurement Thresholds apply in relation to the Council's procurement activities.

### 1.19 What are Procurement Thresholds?

- 1.19.1 The Procurement Regulations set out certain legislative financial thresholds, above which specific procurement rules apply.
- 1.19.2 Procurement Thresholds are calculated based on the estimated Total Value of a contract over the contract term.
- 1.19.3 The Procurement Thresholds in force from time to time are set out in the Procurement Thresholds Annex.

### 1.20 How are estimated contract values calculated?

- 1.20.1 Estimated contract values should be calculated on the basis of the whole life value (or estimated whole life value) for any purchase, including any anticipated contract extension. This value should be calculated as follows:
  - a Fixed term contract – the total price to be paid, or which could be paid, during the fixed term period.
  - b Contract for recurring transactions of the same type – aggregated total value of those transactions over the expected life of the contract.
  - c Contracts for an uncertain duration – monthly payment multiplied by 48.
- 1.20.2 Any estimated contract value must be a genuine pre-estimate that factors in all associated costs (for example, any repair and maintenance required).
- 1.20.3 Similar contracts with the same supplier should be aggregated across the Council. There must be no artificial disaggregation to avoid meeting a Procurement Threshold.
- 1.20.4 Where a contract is being awarded as lots under a Framework, the Total Value of the contract is the Framework value and not the value of the individual lot. **Contracts must not be sub-divided into smaller lots so as to avoid the requirements of these Contract Procedure Rules.**

## **F – PREPARING FOR PROCUREMENT**

### **PROCUREMENT PIPELINE**

#### **1.21 What is the procurement pipeline?**

- 1.21.1 The Council requires all upcoming procurements that meet Key Decision thresholds to be recorded in a procurement pipeline, which forms part of the Forward Plan. At the start of each financial year, the procurement pipeline is presented to the Executive for approval.
- 1.21.2 Chief Officers and Responsible Officers should be mindful of the need to plan their procurements in advance and take reasonable steps to ensure that their required procurement activities are included in the Forward Plan.

#### **1.22 When can a procurement not in the Forward Plan be added?**

- 1.22.1 If a procurement has not been approved by the Executive for inclusion in the Forward Plan, it will require separate in-year approval from the Executive to proceed.
- 1.22.2 Responsible Officers should factor the timeframe for gaining such approval into their procurement planning.

### **PRE-PROCUREMENT STAGE**

#### **1.23 What steps must be taken before the Council makes a purchase?**

Before beginning a purchase, the Responsible Officer must:

- a in a manner commensurate with the complexity and value of the purchase a Procurement Request Form should be completed, which includes the following considerations:
  - v ensure there is a service specification that clearly articulates the outcomes to be achieved;
  - vi take into account the requirements from any review;
  - vii appraise the need for the expenditure and its priority;
  - viii ensure there are no existing contract arrangements already in place that cover the requirement;
  - ix define the objectives of the purchase;
  - x assess the risks associated with the purchase and how to manage them;
  - xi consider what procurement method is most likely to achieve the purchasing objectives, including external or internal sourcing or accessing an existing contract, collaboration with other purchasers, partnering and long term relationships;
  - xii consider any data protection implications to the proposed purchase;

xiii adhere to the provisions of the Social Values Act 2012 for eligible contracts and/or any associated charters; and

xiv consult users as appropriate about the proposed procurement method, contract standards, and performance and user satisfaction monitoring; and

b confirm that:

i there is Member or delegated approval for the expenditure (and the Responsible Officer must ensure that a copy of that approval is retained on file);

ii there is Executive approval for significant new proposals as required by the Financial Procedure Rules; and

iii prior information notices, if required, have been sent<sup>21</sup>.

## **MAKE OR BUY**

### **1.24 What is “make or buy”?**

1.24.1 A “make or buy” decision relates to a choice of whether to manufacture or produce something in-house, or to procure it from an external third party.

1.24.2 Before undertaking a new procurement, the following should be explored, and used as first choice where fit for purpose, available for use and able to demonstrate Best Value, in relation to the procurement:

a Use of internal Council Service(s) or establishment of such Service(s) where they don't currently exist.

b Use of an existing compliant Council Framework.

c Award of a contract to a Council-owned Company with Teckal status, establishing or implementing a public contract with another public sector entity or using another public sector body's Framework or contract.

1.24.3 Responsible Officers should only instigate a procurement process (Invitation to Tender or Invitation to Quote) if the following conditions are met:

a The “make or buy” process outlined above should have been followed to ensure that the In-house Preferred Test does not apply.

b It can be demonstrated that Best Value can be achieved through a competitive procurement process.

c Sufficient time has been allowed to ensure required outcomes are achieved via a competitive procurement.

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<sup>21</sup> [The Public Contracts Regulations 2015, Regulation 48](#)

For the avoidance of doubt, where sufficient time has not been allowed due to the actions or omissions of Officers, this will not be a valid reason for disapplication of these Contract Procedure Rules.

## **MARKET RESEARCH AND CONSULTATION**

### **1.25 When should the Council carry out pre-market research?**

1.25.1 Preliminary market research is permitted where relevant and proportionate. Market research is encouraged in order to inform the procurement process and potential suppliers. Where market research or consultation takes place, this should be in accordance with the Procurement Regulations.

1.25.2 Responsible Officers should seek advice from Strategic Commissioning & Procurement if they are unsure about whether to carry out market research and/or how this should be done.

### **1.26 What pre-Tender market research and consultation is permitted?**

Responsible Officers:

- a may consult potential suppliers prior to the issue of an Invitation to Tender in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided that this does not prejudice any potential Bidder; and
- b must not seek or accept technical advice on the preparation of an Invitation to Tender or Invitation to Quote from anyone who may have a commercial interest in it, if this may prejudice the equal treatment of all potential Bidders or distort competition; and

## **EQUALITY IMPACT ASSESSMENT**

### **1.27 What is an Equality Impact Assessment?**

An "Equality Impact Assessment" is a tool that helps the Council to consider equality, diversity, cohesion and integration in its strategies, policies, services and functions. An Equality Impact Assessment involves assessing the likely (or actual) effects of policies on people in respect of protected equality characteristics including age, disability, race and sexual orientation.

### **1.28 When must an Equality Impact Assessment be carried out?**

1.28.1 An Equality Impact Assessment should be carried out before commencing any procurement activity, where appropriate.

1.28.2 Responsible Officers must complete an Equality Impact Assessment form setting out the impact of the procurement on equality, diversity, cohesion and integration. Further guidance on Equality Impact Assessments can be obtained from Strategic Commissioning & Procurement.

## **CHOICE OF PROCUREMENT ROUTE**

### **1.29 What procurement routes are available to the Council?**

Depending on the nature and value of a contract, the Council has the following options for procuring works, goods, services and materials:

- a Approved List – suppliers on a list previously compiled by the Council are invited to bid for contracts within a specific category, value or amount.
- b Quotations – only suppliers invited by the Council may bid for the contract.
- c Open tendering (Above Threshold Procurements) – a contract opportunity is published, and all interested suppliers are invited to bid.
- d Framework – a contract is awarded to a supplier who has pre-qualified to provide services under a framework agreement.
- e Direct award – a contract is awarded directly to a supplier who is on a framework, without a competition stage.

## **G – PROCUREMENT PROCESS**

This section sets out the procurement routes open to the Council and how they are used. The Procurement Thresholds Annex sets out the applicable thresholds at which each procedure may be used.

### **DIRECT AWARD**

#### **1.30 What is a direct award?**

Direct award allows the Council to award a contract to a contractor without a competition, or to make a material change to an existing contract without carrying out a new procurement.

#### **1.31 How is direct award used?**

1.31.1 Direct award can be used for all types of contracts and is particularly relevant for minor projects and the procurement of professional services.

1.31.2 The following criteria apply to direct awards:

- a all the terms governing the provision of the works, services and supplies concerned must be set out in the Framework; and
- b the objective conditions for determining which of the suppliers on the Framework shall perform them must be set out in the procurement documents.

### **APPROVED LISTS**

#### **1.32 What is an Approved List?**

An Approved List is a list of approved suppliers that has been compiled by the Council for specified categories of work, or for the supply of specified categories of goods, materials or services within specific contract values or amounts.

#### **1.33 When can an Approved List be used?**

1.33.1 Approved Lists should be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise.

1.33.2 An Approved List may not be used where the value of the contract exceeds the relevant Procurement Threshold.

#### **1.34 How are Approved Lists compiled?**

1.34.1 When compiling Approved Lists, the Council shall:

- a follow the procedure stipulated in this section 1.32;
- b include in the Approved List the names and addresses of all suppliers whose requests to be included have been approved by the relevant Head of Service in consultation with the Strategic Commissioning & Procurement Team;

- c not enter suppliers on an Approved List until there has been an adequate investigation into both their financial and technical ability to perform the contract, unless such matters will be investigated each time Tenders are invited from that Approved List;
- d not preclude suppliers from inclusion on an Approved List other than for good reasons;
- e indicate whether a supplier whose name is included in an Approved List is approved for contracts of all, or only some of, the specified categories, values or amounts;
- f ensure that the relevant Head of Service is responsible for their Approved List(s) and will co-ordinate all enquires in respect of those Approved List(s).

1.34.2 Opportunities to join an Approved List must be advertised, and suppliers should be invited to apply for inclusion on the relevant Approved List. The advertisement must be placed to secure widest publicity amongst relevant suppliers and not less than four (4) weeks before the Approved List is first compiled.

### **1.35 What are the review requirements for Approved Lists?**

1.35.1 Approved Lists and their Shortlisting criteria must be reviewed at least annually and readvertised at least every three (3) years. Review means:

- a the reassessment of the financial, technical ability and performance of those suppliers on the Approved List unless such matters will be investigated each time Bidders are invited from that list; and
- b the deletion of those suppliers no longer qualified, with a written record kept justifying the deletion.

1.35.2 Suppliers may be entered on an Approved List between the initial advertisement and any readvertisement provided that the requirements of section 19.34.1 are met.

1.35.3 When an Approved List is re-advertised, a copy of the advertisement must be sent to each supplier on the Approved List, inviting them to confirm that they wish to remain on the Approved List at least four (4) weeks before the advertisement is published. If they wish to remain on the Approved List, they will be reviewed as described in section 19.35.1 above.

1.35.4 All Approved Lists must be open to public inspection.

### **1.36 How are Approved Lists used?**

Where an Invitation to Tender for a contract is limited to suppliers whose names appear on an Approved List maintained, the Invitation to Tender for that contract shall be sent to at least four (4) suppliers on the Approved List. Each supplier invited to Tender must be approved for a contract for the category, value or amount selected. If there are insufficient suitably qualified suppliers to meet the competition requirement, all suitably qualified suppliers must be invited.

## **QUOTATIONS**



### **1.37 What is the Quotation process?**

The Council will issue Invitations to Quote for procurements within the relevant Procurement Thresholds set out in the Procurement Thresholds Annex.

### **1.38 How are Quotations used?**

The process for issuing and evaluating a Quotation is set out in sections 19.56 to 19.62.

## **OPEN TENDERING**

### **1.39 What is open tendering?**

Open tendering applies in accordance with the requirements of the Procurement Regulations.

### **1.40 How is open tendering used?**

All open Tender opportunities will be advertised via Contracts Finder and the advert shall:

- a Set out the nature and purpose of the contract;
- b indicate how tender documents may be obtained;
- c invite tenders;
- d state the closing date and time by which valid tenders must be returned via the E-tendering Portal; and
- e evaluate the Tender and award the contract in compliance with the Procurement Regulations.

## **FRAMEWORKS**

### **1.41 How are Frameworks established?**

1.41.1 The Council may establish its own Frameworks, which may be single-supplier or multi-supplier.

1.41.2 Any Framework must be established in accordance with the Procurement Regulations.

1.41.3 When setting up a framework, consideration should be given to whether the contract can be sub-divided into lots. The reasoning should be recorded by Strategic Commissioning & Procurement where a contract is not sub-divided in this way.

### **1.42 How are frameworks used?**

1.42.1 The Council may call off from its own Frameworks, or from those established by other public bodies and Crown Commercial Service.

- 1.42.2 The Council may call off from a Framework directly or hold a call off competition among suppliers on the Framework.
- 1.42.3 Where a Framework has been validly approved and established by the Council. Chief Officer's may (in accordance with the Scheme of Delegations and the Procurement Thresholds Annex) issue orders under that Framework, provided that they comply with the scope of the Framework and any conditions applicable to the Framework.
- 1.42.4 The Framework will set out the terms of any call off competition, and the terms on which a successful supplier will be engaged.
- 1.42.5 Frameworks should be monitored by Strategic Commissioning & Procurement to ensure that the total spend under any Framework does not exceed the total permitted.
- 1.42.6 Contracts to be concluded by a call off from a Framework established by another public body shall be carried out in accordance with the rules for the operation of that Framework. Responsible Officers should ensure that the Council is eligible to participate in the Framework, taking advice from Strategic Commissioning & Procurement as necessary.

## **ROUTE TO MARKET**

### **1.42.7 What are the pre-requisites for a procurement process to start?**

1.42.8 A procurement process should not be commenced unless:

- a a genuine and timely pre-estimate of the Contract value has been completed in accordance with section 19.20;
- b in the case of a contract for the execution of any works, a business case has been prepared, or Executive approval has been given;
- c there is an approved budget, or relevant approval by the relevant Chief Officer;
- d a strategy report (where applicable) has been approved;
- e a contract manager has been identified for the contract; and
- f a Procurement Request Form has been completed.

1.42.9 Consideration of the appropriate route to market shall include options for the Council to undertake its own procurement process or consider awarding contracts in line with the conditions of a compliant Framework available to the Council to use. Before considering the route to market, Responsible Officers should ensure that "make or buy" has been considered, as appropriate, in accordance with section 19.24.

1.42.10 Responsible Officers shall, in conjunction with Strategic Commissioning & Procurement, consider the procurement procedures available to the Council with due regard to the Procurement Regulations. For an Above Threshold Procurement, the requirements set out in the Procurement Regulations must be followed strictly when selecting a route to market.

- 1.42.11 For audit and transparency purposes, proportional details and records on justification of the chosen route to market should be kept by Strategic Commissioning & Procurement.

#### **1.43 What are the competition requirements for purchases made by the Council?**

- 1.43.1 The competition requirements for any contract are determined by the Procurement Thresholds set out in the Procurement Thresholds Annex. The procurement route for any contract will be as described in the Procurement Thresholds Annex.
- 1.43.2 All Relevant Contracts must be subject to competition, unless an exemption applies in accordance with the Exemptions Annex or in an emergency situation, as described in section 19.7.
- 1.43.3 **An Officer must not enter into separate contracts, nor select a method of calculating the Total Value of a contract in order to minimise the application of these Contract Procedure Rules.**
- 1.43.4 Where services are currently purchased internally, i.e., from within the Council, for internal provision, the requirement to obtain other Quotations or Tenders does not apply. However, Services may choose to seek alternative Quotations / Tenders for the purpose of market testing.
- 1.43.5 The sale of goods and materials to staff must be approached with caution and the tendering procedures set out in these Contract Procedure Rules must be used. Advice should be sought from Strategic Commissioning & Procurement to ensure that any such sale is compliant with these Contract Procedure Rules and relevant legislation.

#### **1.44 What are the requirements for services provided by the Council to external purchasers?**

Any provision of services by the Council to external purchasers must comply with the Local Authority (Goods and Services) Act 1970<sup>22</sup>. Advice should be sought from Strategic Commissioning & Procurement on any such provision of services.

#### **1.45 What are the requirements for Partnership Arrangements entered into by the Council?**

- 1.45.1 Partnership Arrangements must comply with these Contract Procedure Rules and applicable legislation. If in doubt, Officers must seek the formal written advice of the Chief Finance Officer and Strategic Commissioning & Procurement before entering into any Partnership Arrangement.

### **LIGHT TOUCH REGIME**

#### **1.46 What is the Light Touch Regime?**

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<sup>22</sup> [Local Authority \(Goods and Services\) Act 1970](#)

The Procurement Regulations allow the Council to apply the Light Touch Regime, which gives greater flexibility in the procedure the Council must use, to procure certain services<sup>23</sup>.

#### **1.47 When does the Light Touch Regime apply?**

1.47.1 The Light Touch Regime only applies to Above Threshold Procurements.

1.47.2 Although the use of the flexibility permitted by the Light Touch Regime is encouraged, the principles in relation to public procurement, as outlined in these Contract Procedure Rules, still apply. Application of the Light Touch Regime does not negate requirements to comply with these Contract Procedure Rules and follow the Council's formal decision-making process.

### **STANDARDS AND AWARD CRITERIA**

#### **1.48 What standards and award criteria apply to the award of contracts by the Council?**

1.48.1 A Responsible Officer must ascertain which standards (UK and/or international) apply to the subject matter of the contract they are seeking to procure. The Responsible Officer must include in the award criteria for a purchase those standards that are necessary to properly describe the required quality of the subject matter of the contract, and with which the supplier will be expected to comply.

1.48.2 The Responsible Officer must define the Award Criteria for a purchase so as to ensure that M.E.A.T. is secured.

1.48.3 Award Criteria must not include:

- a Non-Commercial Considerations<sup>24</sup>;
- b matters which are contrary to the terms of the UK-EU Trade and Co-operation Agreement or the Government Procurement Agreement; or
- c matters which are anti-competitive within the meaning of the Local Government Act 1988.

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<sup>23</sup> [Public Contracts Regulations, Schedule 3](#)

<sup>24</sup> [Local Government Act 1988, section 17](#)

## **H – MECHANISMS FOR FORMAL TENDERS**

The Procurement Regulations set out five options for the procurement of Above Threshold Procurements. This section sets out, in brief, the requirements of each route. When choosing a procurement route, Responsible Officers should always discuss this with Strategic Commissioning & Procurement and Legal Services to ensure that an appropriate and compliant option is used.

### **OPEN PROCEDURE**

#### **1.49 What is the Open Procedure and when is it used?**

- 1.49.1 The Open Procedure<sup>25</sup> allows any interested Bidder to submit a response to a contract notice issued by the Council.
- 1.49.2 This procedure is suitable for simple procurements where the requirement is straightforward, for example, the purchase of goods where the requirement can be clearly defined, and the Council is seeking the lowest price for those goods.
- 1.49.3 There is no pre-qualification stage for Bidders, and Responsible Officers should be aware that this could lead to a large number of responses being received.

### **RESTRICTED PROCEDURE**

#### **1.50 What is the Restricted Procedure and when is it used?**

- 1.50.1 The Restricted Procedure<sup>26</sup> allows the Council to set pre-qualification criteria which must be met by Bidders before they can submit a response.
- 1.50.2 The Council may wish to use the Restricted Procedure to ensure that only Bidders of a particular financial standing and/or with specific technical or professional capability are able to respond.
- 1.50.3 The Restricted Procedure requires that the Council has a fully defined requirement so that Bidders can submit a fully priced Tender without the need for subsequent negotiation.

### **COMPETITIVE PROCEDURE WITH NEGOTIATION**

#### **1.51 What is the Competitive Procedure with Negotiation and when is it used?**

- 1.51.1 The Competitive Procedure with Negotiation<sup>27</sup> allows the Council to negotiate with Bidders after they have submitted a Tender. This procedure includes a pre-qualification stage to ensure that appropriate Bidders respond.
- 1.51.2 This procedure may be used where it is not possible for the Council to fully define its requirement. The following conditions apply to the use of the Competitive Procedure with Negotiation<sup>28</sup>:

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<sup>25</sup> [Public Contracts Regulations 2015, Regulation 27](#)

<sup>26</sup> [Public Contracts Regulations 2015, Regulation 28](#)

<sup>27</sup> [Public Contracts Regulations 2015, Regulation 29](#)

<sup>28</sup> [Public Contracts Regulations 2015, Regulation 26\(4\)](#)

- a the Council's needs cannot be met without adaptation of readily available solutions; or
  - b the Council's requirement includes design or innovative solutions; or
  - c the contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, the complexity, or the legal and financial make-up of the requirement, or because of risks attaching to them; or
  - d the technical specifications cannot be established with sufficient precision by the Council with reference to a standard, common technical specification or technical reference; or
  - e an Open or Restrictive Procedure procurement has been run but only irregular or unacceptable Tenders have been submitted.
- 1.51.3 The Invitation to Tender should set out the requirement in sufficient detail so that Bidders are clear about the subject matter of the contract, the minimum requirements, and the Award Criteria.
- 1.51.4 The use of this procedure should be justified, and the Responsible Officer should ensure that the reasons for its use are recorded.
- 1.51.5 Under the Competitive Procedure with Negotiation, the Council does not have to negotiate with Bidders. If an appropriate Tender is received, the Council may award the contract on the basis of that Tender.

## **COMPETITIVE DIALOGUE**

### **1.52 What is a Competitive Dialogue and when is it used?**

- 1.52.1 A Competitive Dialogue<sup>29</sup> is similar to the Competitive Procedure with Negotiation. It includes a pre-qualification stage and allows the Council to negotiate with Bidders. The requirements set out in section 1.51.2 to 1.51.4 above will also apply to a Competitive Dialogue.
- 1.52.2 A Competitive Dialogue allows more flexibility around negotiation with Bidders and negotiation can take place without submission of initial Tenders. The Council can use dialogue with suppliers to define the best way of meeting its requirement.

## **INNOVATION PARTNERSHIP**

### **1.53 What is an Innovation Partnership and when is it used?**

- 1.53.1 An Innovation Partnership<sup>30</sup> allows the Council to procure the research and development and product / service aspects of a contract in a single procurement. This procedure can be used where there is no appropriate solution already available on the market.

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<sup>29</sup> [Public Contracts Regulations 2015, Regulation 30](#)

<sup>30</sup> [Public Contracts Regulations 2015, Regulation 31](#)

1.53.2 An Innovation Partnership has a pre-qualification stage to ensure that appropriate Bidders respond. It requires the Council to set out the need for innovation and the Award Criteria for the contract in the Invitation to Tender.

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## **I – TENDERS AND QUOTATIONS**

### **INVITATIONS TO TENDER**

The Council is required, in certain circumstances, to issue an Invitation to Tender to potential Bidders for a contract. The Council may also wish to issue an Invitations to Tender in other circumstances. This section sets out the requirements for an Invitation to Tender and the process the Council must follow when inviting Tenders.

#### **1.54 When will the Council use an Invitation to Tender?**

Invitations to Tender are used when the Council wishes, or is required, to invite Tenders from suppliers. The Procurement Thresholds Annex sets out when Tenders must be invited for contracts at specified values.

#### **1.55 What information should an Invitation to Tender contain?**

1.55.1 An Invitation to Tender should state that a Tender will not be considered unless it is received by the date and time stipulated. Tenders delivered after the deadline will not be considered.

1.55.2 All Invitations to Tender must include the following:

- a a specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers;
- b a requirement for Bidders to declare that the Tender content, price or any other figure or particulars concerning the Tender have not been disclosed by the Bidder to any other party (except where such disclosure is made in confidence for a necessary purpose);
- c a requirement for Bidders to complete fully and sign all Tender documents including a form of Tender and certificates relating to canvassing and non-collusion;
- d a notification that Tenders are to be prepared at the Bidders expense;
- e a description of the Award Procedure and, unless defined in a prior advertisement, a definition of the Award Criteria;
- f details of how Bidders should submit their Tender;
- g a stipulation that any Tenders submitted by fax or e-mail are not allowed; and
- h the method by which arithmetical errors discovered in the submitted Tenders are to be dealt with. In particular, whether the overall price prevails over the rates in the Tender or vice versa.

1.55.3 All Invitations to Tender must specify the goods, services or works that are required, together with the terms and conditions of contract that will apply (see section J)

1.55.4 The Invitation to Tender must state that the Council is not bound to accept any Tender and can stop the Tender process at any time.



- 1.55.5 All Bidders invited to Tender must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

## **INVITATIONS TO QUOTE**

For lower value contracts where an Invitation to Tender is not required, the Council will issue an Invitation to Quote to potential Bidders for a contract. An Invitation to Quote is a simpler process than an Invitation to Tender. This section sets out the requirements for an Invitation to Quote and the process the Council must follow when inviting Quotations.

### **1.56 When will the Council use an Invitation to Quote?**

Invitations to Quote are used when the Council wishes, or is required, to invite Quotes from suppliers. The Procurement Thresholds Annex sets out when Quotes must be invited for contracts at specified values.

### **1.57 What information should an invitation to Quote contain?**

- 1.57.1 An Invitation to Quote should state that a Quote will be considered unless it is received by the date and time stipulated. Quotes delivered after the deadline will not be considered. A minimum of two (2) weeks must be given for the return of Quotations except in exceptional circumstances to be agreed with Corporate Procurement

- 1.57.2 All Invitations to Quote must include the following:

- a a specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers;
- b a requirement for Bidders to declare that the Quotation content, price or any other figure or particulars concerning the Quotation have not been disclosed by the Bidder to any other party (except where such disclosure is made in confidence for a necessary purpose);
- c a requirement for Bidders to complete fully and sign all Quotation documents including a form of Quotation and certificates relating to canvassing and non-collusion;
- d a notification that Quotations are to be prepared at the Bidders expense;
- e a description of the Award Procedure and, unless defined in a prior advertisement, a definition of the Award Criteria; and
- f details of how Bidders should submit their Quotation;
- g a stipulation that any Quotation submitted by fax or e-mail will be rejected unless it has been specifically requested by the Council (see section 19.60.2 below).

- 1.57.3 All Invitations to Quote must specify the goods, services or works that are required, together with the terms and conditions of contract that will apply (see section J).

- 1.57.4 The Invitation to Quote must state that the Council is not bound to accept any Quotation and can stop the Quotation process at any time.

## **SUBMISSION OF TENDERS AND QUOTATIONS (ELECTRONIC TENDERING)**

### **1.58 How should Tenders be submitted?**

- 1.58.1 All Tenders must be submitted using the Council's electronic tendering system, i.e., the E-tendering Portal.

- 1.58.2 Tenders submitted by electronic means shall ensure that:

- a evidence that the transmission was successfully completed is obtained and recorded through the system; and
- b Tenders are not opened until the deadline for submission has passed.

- 1.58.3 Tenders received by fax or e-mail will be rejected.

### **1.59 What are the time periods allowed for submission of a Tender?**

The time periods applicable to submission of Tenders will be as set out in the Procurement Regulations.

### **1.60 How should Quotations be submitted?**

- 1.60.1 Where Invitations to Quote are published on the E-tendering Portal, the provisions of section 19.58.2 shall apply.

- 1.60.2 Where the E-tendering Portal is not used for an Invitation to Quote:

- a Bidders are permitted to submit their Quotation via email to the email address provided in the Invitation to Quote;
- b an audit trail shall be put in place in order to uphold the principles set out in these Contract Procedure Rules; and
- c a record shall be made of the Quotations received, including names and addresses of Bidders and the date and time of opening.

## **CLARIFICATION OF TENDERS AND QUOTATIONS**

### **1.61 When may Bidders and the Council seek clarification in relation to a Tender?**

- 1.61.1 The Council is permitted to provide clarification to an Invitation to Tender to potential and actual Bidders. Clarification questions should be submitted through the E-tendering Portal.

- 1.61.2 The Council may seek clarification from a Bidder in relation to a Tender in writing or in a meeting.

### **1.62 When may the Council seek clarification in relation to a Quotation?**

The Council may seek clarification from a Bidder in relation to a Quotation in writing.

## **EVALUATION OF TENDERS**

### **1.63 How are Tenders evaluated and awarded?**

Tenders must be evaluated and awarded in accordance with the Award Criteria.

### **1.64 What happens if there are arithmetical errors in a Tender?**

1.64.1 The arithmetic in compliant Tenders must be checked. If arithmetical errors are found they should be notified to the Bidder, who should be requested to confirm the correct arithmetic, or withdraw their Tender.

1.64.2 Alternatively, if the Bidder has provided contract rates in their Tender and these are stated to prevail over the overall contract price, the Council may request that the Bidder submits an amended Tender with a contract price based on the rates in the Tender.

### **1.65 How are Tenders based solely on price evaluated?**

1.65.1 If the Award Criteria for a Tender are solely based on contract price, the Council may only select the lowest price (if payment is to be made **by** the Council) or the highest price (if payment is **to** be made to the Council), unless otherwise approved by:

- a the Executive, after considering a report from the appropriate Head of Service; or
- b a duly authorised Officer, following consultation with the appropriate Executive Member.

A record of the reason for accepting a different Tender must be made, as appropriate.

### **1.66 With whom may information be shared in relation to Tenders?**

1.66.1 Save as otherwise set out in this section 19.66:

- a confidentiality of Tenders and the identity of Bidders must be preserved at all times; and
- b information about one Bidder's response must not be given to another Bidder.

1.66.2 The Responsible Officer should debrief in writing all those Bidders who submitted a Tender about the reasons why they were unsuccessful and the characteristics and relative advantages of the successful Bidder. This debrief should normally include:

- a how the Award Criteria were applied; and
- b the prices or range of prices submitted, in either case not correlated to Bidders' names.

1.66.3 The same information may be given to those who responded in any pre-Tender selection process. No other information should be given without taking the advice of the Chief Finance Officer and the Head of Strategic Commissioning & Procurement.

## **CONTRACT AWARD**

### **1.67 What are the formalities for publishing information about a Contract Award?**

1.67.1 Where a contract with a value above the Low Value Contracts Threshold (as defined in the Procurement Thresholds Annex) is awarded, the following information shall be published on Contracts Finder:

- a name of contractor;
- b date on which the contract is entered into;
- c value of the contract; and
- d whether the Contractor is a SME or voluntary and community vector enterprise (VCSE).

1.67.2 For all contracts subject to the Procurement Regulations, Contract Award Notices shall take into account any requirements and conditions around standstill period<sup>31</sup>, and an individual contract report is to be completed<sup>32</sup>.

### **1.68 When and how should Bidders be notified of a Contracting Decision?**

Prospective Bidders must be notified in writing at the same time, and as soon as possible, of any Contracting Decision. If a Bidder requests, in writing, the reasons for a Contracting Decision, the Responsible Officer must give the reasons in writing as soon as possible.

## **CONTRACT RECORDS**

### **1.69 What records must be kept in relation to contracts?**

1.69.1 Where the Total Value of a contract is below the Procurement Threshold (as set out in the Procurement Threshold Annex) for supplies of goods, materials, consultants or services the Responsible Officer must ensure that the following documents are kept:

1.69.2 Invitations to Quote and any Quotations received;

- a a written record of:
- b any exemption and reasons for it; and
- c if the lowest price is not accepted, the reasons for this; and
- d written records of any communication with the successful Contractor.

1.69.3 Where the Total Value of a contract is above the Procurement Threshold (as set out in the Procurement Threshold Annex) the Responsible Officer must record and retain records of:

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<sup>31</sup> [Public Contracts Regulations 2015, Regulation 87](#)

<sup>32</sup> [Public Contracts Regulations 2015, Regulation 84](#)

- a any pre-Tender market research undertaken;
- b the method for obtaining bids;
- c any Contracting Decision and the reason for it;
- d any exemption that has been applied, together with the reasons for it;
- e the Award Criteria;

#### 1.69.4 Tender documents sent to and received from Bidders;

- a the contract documents;
- b clarification questions submitted and answers provided to Bidders
- c any post-Tender negotiation (to include minutes of meetings);
- d written records of any communication with Bidders during the Tender process;
- e written records of any communication with the successful Contractor throughout the life of the contract; and
- f post-contract evaluation and monitoring.

1.69.5 Written records required by this section 19.69 must be kept for six (6) years (twelve years if the contract is under seal) after the final settlement of the contract. However, documents which relate to unsuccessful Bidders may be electronically scanned or stored by some other suitable method after twelve months from award of contract, provided there is no dispute about the award.

### **1.70 What are the Freedom of Information requirements in relation to contracts?**

The Freedom of Information Act 2000 gives a general right of public access to all types of 'recorded' information held by public authorities, sets out exemptions from that general right, and places a number of obligations on public authorities with regard to the disclosures of information. The Council will, as a general rule, allow public access to recorded information where possible and the Contractor shall agree to the Council making any disclosures in accordance with the Act.

## **WITHDRAWAL OF TENDER**

### **1.71 What happens if a successful Bidder withdraws their Tender?**

If a Bidder withdraws their Tender after being awarded the contract, the Council will not (unless the Executive resolves otherwise) accept future Tenders from that Bidder for a period of two (2) years from the date of withdrawal.

## **NOMINATED SUB-CONTRACTORS**

### **1.72 What is the process for the Council to nominate a Sub-contractor?**

- 1.72.1 The following provisions shall have effect where the Council proposes to enter into a contract for the execution of work with a person (the “Main Contractor”) and also proposes to nominate to the Main Contractor one or more Sub-contractors for the execution of work or the supply of goods, materials or services within the contract with the Main Contractor.
- 1.72.2 The Council will issue an Invitation to Tender to potential Sub-contractors in accordance with the relevant provisions of section I, and:
- a the terms of the Invitation to Tender shall include a requirement that the successful Bidder will enter into a contract with the Main Contractor, under which the Main Contractor will be indemnified by the Sub-contractor in respect of its obligations to the Council which relate to the delivery / discharge of the work or goods, materials or services to be provided by the Sub-contractor; and
  - b the relevant Head of Service (or their authorised representative) shall nominate to the Main Contractor the most appropriate Bidder as Sub-contractor. Provided that, where the successful Tender is other than the lowest price received by the Council, the circumstances shall be reported appropriately.
- 1.72.3 Tenders received under this section 19.72 must comply with the relevant provisions of section I.

## **J – CONTRACT AND OTHER FORMALITIES**

This section sets out the contract requirements for purchases made by the Council, including provisions that must be included in certain contracts, signing formalities, and the role of Legal Services.

### **CONTRACT DOCUMENTS**

#### **1.73 What is the role of Legal Services in relation to contracts?**

All contracts should be sent to Legal Services for preparation and registration. Legal Services will be responsible for ensuring that contracts are appropriately executed by the Council.

#### **1.74 When must a contract be entered into?**

1.74.1 With the exception of minor cash transactions made in accordance with the Financial Procedure Rules, every contract for the execution of work or the supply of goods, materials or services shall be created only by:

- a the issue of an official order raised via the Council's financial system; or
- b where an Invitation to Tender has been issued, the completion of a formal written contract.

1.74.2 Section 19.74.1(b) above does not apply if the relevant Head of Service or their authorised representative) certifies that, owing to the nature of the proposed contract, the interests of the Council will be adequately protected by the issue of an official order form as in section 19.74.1(a) above.

1.74.3 All contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances (as agreed in writing by the Chief Finance Officer)the Chief Finance Officer.

#### **1.75 What are the requirements for contracts entered into by or on behalf of the Council?**

1.75.1 Every Relevant Contract over the Low Value Procurement Threshold purchases, for works, supplies of goods, materials, consultants or services must also as a minimum state clearly:

- a that the Contractor may not assign or sub-contract without the prior written consent of the Council;
- b any insurance(s) the Contractor is required to have;
- c any health and safety requirements the Contractor is required to follow;
- d any relevant ombudsman requirements;
- e the requirements for ensuring compliance with data protection legislation;

- f that charter standards are to be met, if relevant;
- g the Council's requirements in respect of Freedom of Information and Human Rights;
- h if relevant, that agents used to let contracts must comply with these Contract Procedure Rules;
- i a right of access for the Council to relevant documentation and records of the Contractor for monitoring and audit purposes; and
- j whistleblowing arrangements.

1.75.2 All contracts must include the following paragraph:

***“The Contractor recognises that the Council is under a duty to act in a manner which is compatible with the Convention rights as defined by Section 1(1) of the Human Rights Act 1998 ('Convention Rights'). This duty includes a positive obligation on the Council to ensure that contractors providing services on the Council's behalf act in a way which is compatible with the Convention Rights. The Contractor therefore agrees to provide the Services and comply with its other obligations under this contract in a manner which is compatible with the Convention Rights.”***

1.75.3 Where payment in advance is required under a contract, the formal written approval of the Head of Strategic Commissioning & Procurement, following due diligence of the organisation, is required. In the event of industry standards leading to a common accepted practice of advance payments (e.g., software licences) this would only need to be sought once.

## **1.76 When must the advice of Legal Services be sought in relation to a contract?**

1.76.1 Notwithstanding that all contracts should be sent to Legal Services for review, the formal advice of Legal Services must be sought for a Contract that includes one or more of the following features:

- a the Total Value of the procurement is above the Key Decision threshold;
- b it involves financial lease arrangements;
- c it is proposed to use a contractor's own terms; or
- d it is particularly complex or high risk.

## **EXECUTION OF CONTRACTS**

### **1.77 What are the execution formalities for Council contracts?**

1.77.1 All Contracts shall be executed by an Officer with authority to do so under the Council's Scheme of Delegations.

1.77.2 The use of electronic signatures is permitted provided a process has been established and approved by Legal Services.



1.77.3 The Officer responsible for securing the signature of the Contractor must ensure that the person signing for the Contractor has authority to bind it. If the Officer is uncertain, this must be referred to Legal Services.

1.77.4 Where contracts are completed by each side adding their formal seal, the fixing of the Council's seal must be witnessed by an Officer on behalf of the Monitoring Officer. Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal.

1.77.5 The Council's seal must not be affixed without the authority of the Council, the Executive or a Chief Officer / Head of Service acting under delegated powers.

#### **1.78 When must a contract be sealed?**

1.78.1 A contract must be sealed where;

- a the Council wishes to enforce the contract for more than six years after it ends;
- b the price paid or received under the contract is a nominal price and does not reflect the value of the goods or services;
- c there is any doubt about the authority of the person signing for the Contractor; or
- d the Total Value of the contract is expected to exceed the Procurement Threshold for works, goods, services or materials, consultancy, or a Concession Contract as set out in the Procurement Thresholds Annex.

1.78.2 Notwithstanding the above, there is no requirement for a contract to be sealed if the Monitoring Officer has determined that this is not required.

### **LIQUIDATED DAMAGES**

#### **1.79 When should a liquidated damages provision be included in a contract?**

Every formal written contract, which exceeds the Low Value Contract Threshold set out in the Procurement Thresholds Annex and is for the execution of works shall provide for liquidated damages to be paid by the Contractor in case the terms of the contract are not duly performed.

### **BONDS**

#### **1.80 When is a Bond required?**

1.80.1 The Responsible Officer must consult the Chief Finance Officer about whether a Bond is needed where:

- a the Total Value of a contract exceeds £200,000; or
- b it is proposed to make stage payments or other payments in advance of receiving the whole of the subject matter of the contract.

### **PARENT COMPANY GUARANTEES**

## **1.81 When is a parent company guarantee required?**

1.81.1 The Responsible Officer must consult the Chief Finance Officer about whether a parent company guarantee is required where a Bidder is a subsidiary of a parent company and:

- a the Total Value of the contract exceeds £200,000;
- b the Contract Award is based on evaluation of the parent company; or
- c there is concern about the financial stability of the Bidder.

## **PREVENTION OF CORRUPTION**

### **1.82 What measures must be taken to prevent corruption?**

1.82.1 High standards of conduct are obligatory for all Officers. A Responsible Officer must comply with the Officer Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the Responsible Officer to prove that anything received from a Bidder or Contractor was not received corruptly. Corrupt behaviour will lead to dismissal and is a crime under statutes referred to in section 19.82.2.

1.82.2 The following clause must be included in every written contract entered into by the Council:

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

- a ***offer, give or agree to give anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done); or***
- b ***commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972; or***
- c ***commit any fraud in connection with this or any other Council Contract whether alone or in conjunction with Members, Contractors or employees.”***

Any clause limiting the Contractor’s liability shall not apply to this clause.

### **1.83 How is suspected corruption investigated?**

Any suspected irregularity shall be referred to the Internal Audit Manager who shall notify the Chief Finance Officer and Monitoring Officer where necessary. Any examination of Contractors’ or Bidders’ books and records undertaken because of any such suspected irregularity shall be conducted by the Internal Audit Manager. If, in the investigation of any irregularity, the Chief Finance Officer considers that disciplinary procedures may need to be invoked, the appropriate Head of Service, Head of Legal & Democratic Services and Head of HR Client Services shall also be notified.

## **DECLARATION OF INTERESTS**

### **1.84 When must Members and Officers declare in interest in relation to a contract?**

- 1.84.1 If it comes to the knowledge of a Member or an Officer that a contract in which he or she has a pecuniary interest has been, or is proposed to be, entered into by the Council, they shall immediately give written notice to the Monitoring Officer.
- 1.84.2 Such written notice is required irrespective of whether the pecuniary interest is direct or indirect. An indirect pecuniary interest arises in respect of a contract to which the member or employee is not directly a party.
- 1.84.3 A shareholding in a body not exceeding a total nominal value of £1,000 or 1% of the nominal value of issued share capital (whichever is the less) is not a pecuniary interest for the purposes of this section 19.84.
- 1.84.4 The Monitoring Officer shall maintain a record of all declarations of interests notified by Members and Officers.
- 1.84.5 The Monitoring Officer shall ensure that the attention of all Members is drawn to the national code of local government conduct.
- 1.84.6 For the avoidance of doubt, the Member Code of Conduct, the Officer Code of Conduct and relevant provisions in the Constitution relating to declarations of interests shall apply to Members and Officers, as applicable.

## **K – THE LIFE OF THE CONTRACT**

### **CONTRACT MANAGEMENT**

#### **1.85 What are the Council's contract management requirements?**

- 1.85.1 Proportionate contract management, taking into account the risks to the Council in relation to a contract, must be an integral part of considerations when planning a procurement. Responsible Officers should ensure that there is a dedicated contract manager who is suitably qualified and experienced, and who will have detailed knowledge of the contract, and that appropriate contract management systems that are aligned to contract and corporate objectives, Value for Money / Best Value and performance improvement are in place.
- 1.85.2 Payments should be made in accordance with relevant contract terms and the Procurement Regulations and in a timely manner to avoid the payment of any interest charges.
- 1.85.3 The Council has a Contract Monitoring Framework, which sets out how contracts should be monitored during their life. Responsible Officers must comply with the Contract Monitoring Framework in respect of contracts for which they are responsible.
- 1.85.4 Strategic Commissioning & Procurement will ensure that:
- a there is compliance with the specification, pricing and contract terms for any procurement;
  - b contract performance and key performance indicators (where applied) are monitored and enforced on a regular basis with any reduction in performance addressed;
  - c regular budget monitoring and cost reconciliation of payments takes place to ensure that the contract sum is not exceeded; and
  - d contract risk assessments are conducted at regular intervals.

#### **1.86 What happens if a Contractor fails to comply with the contract?**

- 1.86.1 If a Contractor fails to comply with any of the provisions of a contract, the contract manager must try to secure compliance in accordance with the terms of the contract. Proper records must be kept regarding contract failings and any corrective measures put forward.
- 1.86.2 If this is not successful, the matter should be referred promptly to Strategic Commissioning & Procurement and their advice should be sought as to what action should be taken to protect the Council's interests.

#### **1.87 How are disputes with Contractors managed?**

Where practicable, all Contracts should contain a dispute resolution procedure. If there is a contract dispute, the contract manager must follow the dispute resolution

provisions contained in the contract and seek legal advice from Legal Services where necessary. Advice should also be sought from the Chief Finance Officer regarding the financial implications of any dispute.

## **CONTRACT EXTENSIONS AND VARIATIONS**

### **1.88 When and how may contracts be extended and/or varied?**

1.88.1 Contracts may only be extended or varied where:

- a the contract permits the extension or variation;
- b the extension or variation complies with the Procurement Regulations and any other applicable legislation;
- c the extension or variation is approved by Chief Finance Officer and the Monitoring Officer.

1.88.2 Guidance should be sought from Strategic Commissioning & Procurement, with confirmation sought from Legal Services (where required) in relation to any proposed extension or variation of a contract to ensure that it is compliant. Crown Commercial Service also provides guidance on this<sup>33</sup>.

1.88.3 Any extension or variation of an Above Threshold Procurement must be made in accordance with the Procurement Regulations.

1.88.4 Any approval of an extension or variation to a contract must be notified to Strategic Commissioning & Procurement to be recorded in the Contracts Register .

1.88.5 Any contract extension entered into that is not envisaged by the original contract for the relevant procurement will be considered a breach of these Contract Procedure Rules and section 19.4 will apply. Where such an extension is deemed to be required, advice should be sought from Strategic Commissioning & Procurement on how to procure the required services in a compliant way.

## **TERMINATION OF CONTRACTS**

### **1.89 What termination provisions should contracts include?**

1.89.1 Every contract entered into should include appropriate provisions for its termination. Responsible Officers should seek advice from Legal Services on the termination clause(s) that should be included in a particular contract.

1.89.2 Termination provisions should include:

- a the circumstances in which the Council and the Contractor may terminate the contract;
- b any notice requirements for termination; and
- c the consequences of termination, including (where appropriate), the exit provisions that will apply.

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<sup>33</sup> [Guidance on Amendments to Contracts During their Term](#)

1.89.3 In any event, every contract in respect of an Above Threshold Procurement should include a provision that allows the Council to terminate the contract if:

- a the contract is subject to a modification that would have required a new procurement under the Procurement Regulations; or
- b at the time of the Contract Award, the Contractor should have been excluded from the procurement for one of the reasons set out in the Procurement Regulations<sup>34</sup>.

1.89.4 Legal Services will provide advice to Responsible Officers on the appropriate wording to be included in relevant contracts.

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<sup>34</sup> [Public Contracts Regulations, Regulation 73](#)

## **L – OTHER TYPES OF PROCUREMENT**

### **COMMISSIONING A CONSULTANT**

#### **1.90 What is the process for commissioning a Consultant?**

1.90.1 The engagement of consultant architects, engineers and surveyors or other professional consultants shall be subject to the process outlined in the Commissioning a Consultant Policy.

1.90.2 In summary, the following process shall apply:

- a a business case must be produced evidencing:
  - i the need for the consultant;
  - ii the outcome to be achieved;
  - iii how the work will be managed; and
  - iv the mechanism for funding the work; and
- b the engagement will, in the first instance, be undertaken through the NEPRO Solution.

### **PROCUREMENT OF AGENCY STAFF**

#### **1.91 How are agency staff procured?**

1.91.1 Approval to appoint short-term agency staff must be obtained through a Vacancy Control Form.

1.91.2 Once approval has been obtained, confirmation of the approval and a job description must be sent to [agencyprocurement@middlesbrough.gov.uk](mailto:agencyprocurement@middlesbrough.gov.uk).

1.91.3 The vacancy will, in the first instance be posted to agencies through the Neutral Vendor Framework. Only in circumstances where recruitment is unsuccessful via the Neural Vendor Network will an alternative procurement solution be undertaken.

1.91.4 Candidates will be identified and interviewed. The recruiting manager will appoint and manage the successful agency staff member and be the Responsible Officer for timesheet approval and recording.

1.91.5 Senior or specialist roles will be sought from the Local Government Resourcing Partnership or other associated frameworks. In these circumstances, the Responsible Officer should seek the advice of Strategic Commissioning & Procurement on the procurement of such agency staff after a Vacancy Control Form has been approved.

1.91.6 In all cases, agency positions will be considered to be inside IR35, unless specifically determined otherwise by HR and/or Legal Services.

### **CONCESSION CONTRACTS**

#### **1.92 What is a Concession Contract?**

- 1.92.1 A “Concession Contract” is one under which the Council provides an opportunity to a supplier to exploit the delivery of works, goods or services and the supplier receives benefit or payment for those directly from a third party rather than the Council paying for them directly.
- 1.92.2 A Concession Contract must involve the transfer of an operating risk to the supplier, the risk transferred must involve real exposure to the market, and the services must be for the benefit of the Council or its residents.
- 1.92.3 The advice of Legal Services and Strategic Commissioning & Procurement should be sought to confirm whether a contract is a Concession Contract.

**1.93 How is the value of a Concession Contract determined?**

The value of a Concession Contract is the estimated total turnover that the supplier can generate in consideration for the works, goods or services over the duration of the contract, net of VAT, as estimated by the Council.

**1.94 What are the rules that apply to procurement of Concession Contracts?**

There are specific requirements for the procurement of Concession Contracts that are Above Threshold Procurements<sup>35</sup>. Advice should be sought from Strategic Commissioning & Procurement in relation to any such Concession Contract.

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<sup>35</sup> [Concession Contracts Regulations 2016, Regulation 9](#)



## ANNEX 1 – ROLES AND RESPONSIBILITIES OF OFFICERS AND MEMBERS

Role	Responsibility
<b>Chief Officer</b>	<ul style="list-style-type: none"> <li>• Ensuring own compliance with these Contract Procedure Rules and applicable legislation and guidance.</li> <li>• Ensuring compliance of staff for which responsible for compliance with these Contract Procedure Rules and applicable legislation and guidance.</li> <li>• Approval of commercial business case, route to market strategy and contract management arrangements in accordance with these Contract Procedure Rules.</li> <li>• Ensuring that Contract Award decisions are made in accordance with the Council's Constitution and the Scheme of Delegations.</li> <li>• Engaging in a timely manner with Strategic Commissioning &amp; Procurement to develop a procurement pipeline, maintain the contracts register and identify a named contract manager for each contract awarded.</li> </ul>
<b>Head of Service (Strategic Commissioning &amp; Procurement)</b>	<ul style="list-style-type: none"> <li>• Ownership of these Contract Procedure Rules.</li> <li>• Ensuring that the governance and assurance framework for commercial considerations is complied with robustly and effectively across the Council.</li> </ul>
<b>Responsible Officers</b>	<ul style="list-style-type: none"> <li>• Ensuring that projects involving procurement are managed effectively to ensure compliance with these Contract Procedure Rules.</li> <li>• Ensuring there is a genuine and legitimate business requirement for the spend and an approved budget.</li> <li>• Ensuring that appropriate governance is exercised over decisions to approve expenditure.</li> <li>• Drafting a fit for purpose specification that includes appropriate contract management arrangements.</li> <li>• Supporting the definition of an appropriate route to market for each contract and ensuring that it is followed and that any deviation from the approved approach is justified.</li> <li>• Making a genuine estimate of total contract value over the contract term before commencing any procurement activity.</li> <li>• Conducting procurement activities and contract modifications and extensions for contracts under the financial threshold set out in the Procurement Thresholds Annex.</li> <li>• Engaging with Strategic Commissioning &amp; Procurement for any Above Threshold Procurement.</li> <li>• Seeking guidance from Strategic Commissioning &amp; Procurement on the application of these Contract Procedure Rules and applicable legislation to contracts.</li> </ul>

	<ul style="list-style-type: none"> <li>• Where appropriate, applying exemptions to these Contract Procedure Rules.</li> </ul>
<b>Executive Members</b>	<ul style="list-style-type: none"> <li>• Making strategic decisions in line with the Constitution, including the Budget and Policy Framework within which procurement plans are developed and implemented.</li> <li>• Complying with these Contract Procedure Rules to the extent that they have specific procedural responsibilities.</li> <li>• Ensuring compliance with the Member Code of Conduct, including in relation any interest they may have.</li> <li>• Ensuring that they are not involved in the commissioning and/or procurement processes that operate in the Officer domain.</li> </ul>
<b>Strategic Commissioning &amp; Procurement</b>	<ul style="list-style-type: none"> <li>• Overall strategic ownership of procurement and commercial activity on behalf of the Council.</li> <li>• Engaging proactively with Service Areas to determine the procurement pipeline and how this is facilitated in a proportional and timely manner.</li> <li>• Supporting Service Areas in assessing the commercial considerations of planned procurements at the design stage, including drafting of the route to market strategy and contract management arrangements.</li> <li>• Working with Service Areas to develop proportional and informed category strategies.</li> <li>• Exploring options for using pre-existing public sector compliant contractual arrangements where this represents Best Value, including available Frameworks</li> <li>• Exploring opportunities for collaboration with other public sector bodies where appropriate.</li> <li>• Ensuring compliance with all applicable procurement processes, including under the Procurement Regulations.</li> <li>• Seeking to develop strategic opportunities for synergy between contracts to enable the Council to meet its Best Value duty.</li> </ul>

## **ANNEX 2 – LETTING OF SCHOOL BASED CONTRACTS**

This section outlines the Department for Education & Skills (DfES) regulations ensuring compliance with the requirements of the Fair Funding Scheme when letting contracts. The Fair Funding Scheme has been drawn up in consultation with schools and is approved by the Secretary of State. The Scheme sets out the financial relationship of schools under delegation with the Council and the areas it covers are required by regulations made under the School Standards and Framework Act 1988.

### **1. What are the considerations for letting school-based contracts?**

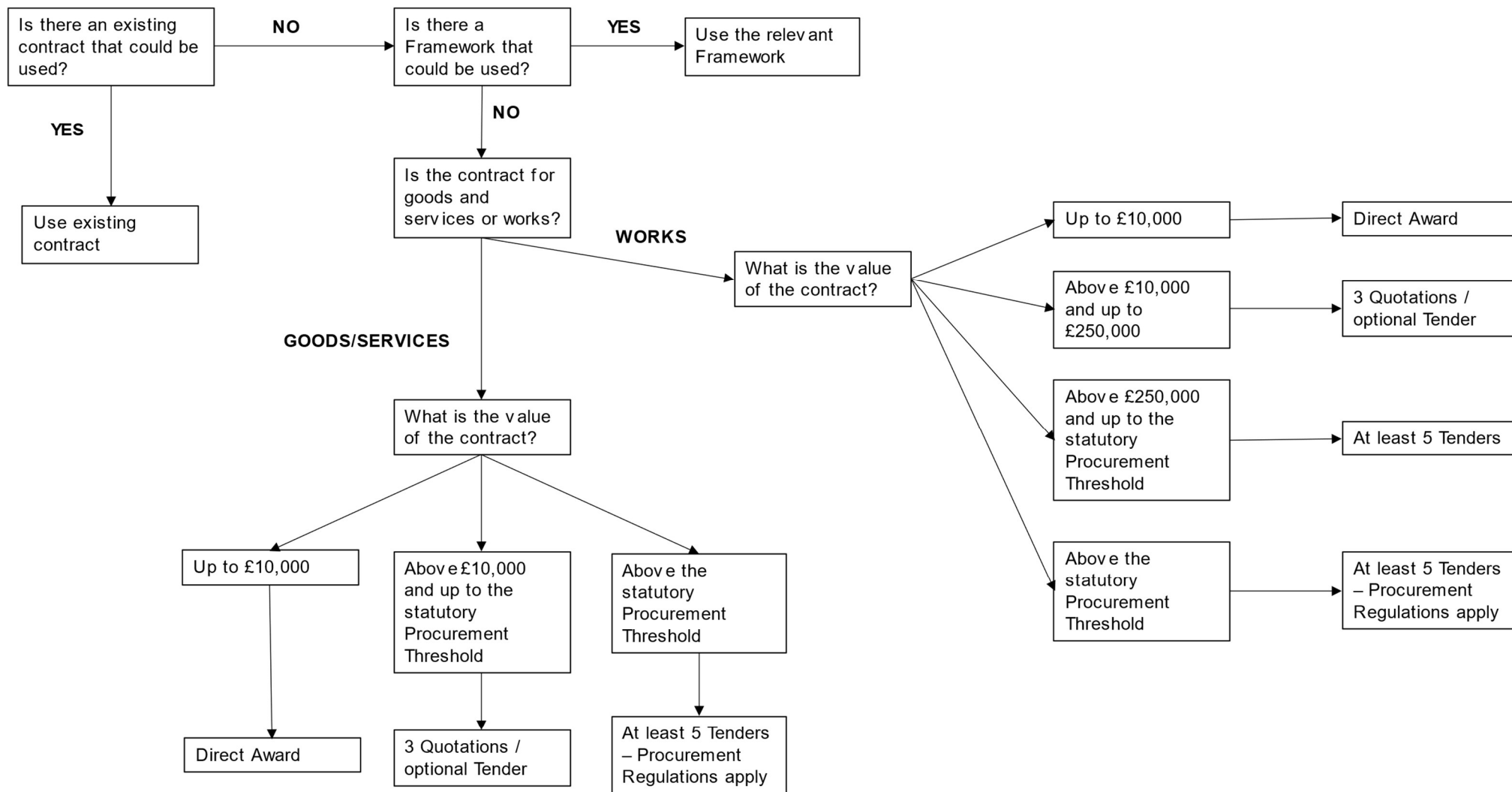
- 1.1 Section 2.9 of the Fair Funding Scheme requires that Governing Bodies maintain a register of business interests of governors and Head teachers. This does not preclude participation in discussions about the relative merits of Quotations and Tenders but does mean those with a declared interest cannot vote on the final decision on the award of a contract. Those with declared interests must not be given any information about the Quotations or Tenders of other Contractors until after the deadline for submission of all Quotations and Tenders has passed.
- 1.2 Governing Bodies are acting as agents of Middlesbrough Council when they enter into contracts using funds delegated by the Authority. This means that Governing Bodies enter into contracts on behalf of Middlesbrough Council. Schools must adhere to the terms and conditions within the contract. Section 6.2.3 of the Fair Funding Scheme enables the Authority to charge any costs to a school's delegated budget awarded against it by a court for breach of contract by a school where they have failed to heed LEA advice.
- 1.3 The status of Governing Bodies of aided and foundation schools gives them additional responsibilities. Governing Bodies of these schools are not acting as agents of the LEA and are not bound by the Financial Scheme when exercising their additional powers or discharging additional responsibilities.
- 1.4 The provision of services and facilities by the LEA are covered by Section 8 of the Fair Funding Scheme. Although not a legally binding contract the terms and conditions of the Service Level Agreement set out the respective responsibilities of schools and the LEA. The Executive Director of Children Families & Learning will act as arbiter should a dispute arise.
- 1.5 Section 1.5 of the Fair Funding Scheme suggests the appropriate delegation to Head teachers. This includes delegation to enter into contracts. Governing Bodies are free to determine their own levels of delegation to Head teachers. In exercising delegated powers Head teachers must abide by the contracting processes referred to in this document.
- 1.6 Section 2.10 of the Fair Funding Scheme does not restrict schools to selecting Contractors from Approved Lists. However, where schools choose Contractors who are not on Middlesbrough Council's approved list they must satisfy themselves as to the health and safety competence and insurance cover of the Contractor. Schools should also have regard to Child Protection legislation and satisfy themselves that Contractors have made adequate arrangements to monitor the activities of employees where they will have access to children during the course of their work. It is essential that schools record their reasons for assessing and selecting a Contractor when they let a contract. This is not only considered good practice but also provides essential evidence to safeguard schools and the LEA from litigation claims.

- 1.7 Schools are advised that selecting Contractors from Middlesbrough Council's approved list is the preferred method of obtaining quotes and Tenders. Details of Contractors on the approved list are available, including the type and value of work for which each Contractor is approved and their status for tax deduction under the Construction Industry Taxation Scheme (CITS) (see section 7.2 of the Finance Scheme and Annex 5 of the Fair Funding Scheme).
- 1.8 Schools are required to seek at least three written Quotations for any contract for goods, materials, services & consultants valued between £16,000 and £53,099. For works at least three written Quotations are required for any contract valued between £16,000 and £106,099.
- 1.9 Schools are required to seek Tenders for any goods, materials, services or consultants valued over £53,100 and works valued over £106,100.
- 1.10 In all cases where Quotations or Tenders are sought schools should accept the bid that is most economically advantageous Tender. The reasons for accepting a Quotation or Tender must always be recorded in the minutes of Governing Body meetings where Head teachers have used delegated powers referred to above.
- 1.11 All Tenders should be accepted by the full Governing Body (subject to the withdrawal from the decision-making process by those with business interests (see above) and delegation to the Head teacher by the Governing Body (see above)). In exceptional circumstances where the lowest Tender is not accepted the Governing Body must record its decision in the minutes of the meeting.

Governing Bodies (or Head teachers with delegated powers) must ensure that Bidders have adequate public liability insurance cover of at least £5m for the work or goods and services covered by the contract before Contractors are appointed.

# **PROCUREMENT THRESHOLDS ANNEX**

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Note that this flowchart is a guide only. Officers should ensure that all procurement is in accordance with the Contracted Procurement Rules, seeking advice from Legal Services and Strategic Commissioning and Procurement, as appropriate.

## PROCUREMENT THRESHOLDS ANNEX

### 1. Introduction

The Procurement Regulations set out statutory Procurement Thresholds (i.e., financial limits) for different types of procurement. Any Above Threshold Procurement must be conducted in accordance with the requirements set out in the Procurement Regulations. Procurements that are below a statutory threshold should be conducted as set out in the tables in this Procurement Thresholds Annex.

### 2. Interpretation

Capitalised terms used in this document shall have the meanings given to them in the Council's Constitution.

This Procurement Thresholds Annex should be read in conjunction with the Contract Procedure Rules set out in section 19 of the Constitution.

### 3. Procurement Thresholds

The current statutory Procurement Thresholds are as follows:

<b>Goods and Services</b>	Up to £213,477
<b>Works</b>	Up to £5,336, 937
<b>Light Touch Regime</b>	Up to £663,540

When applying the thresholds in this Procurement Thresholds Annex, contract values should be calculated on the basis of the whole life of the contract and should **include VAT**. No deduction should be made for any available VAT recovery and the standard rate of VAT (currently 20%) should be used.

When advertising a contract, and for contract award notices, the estimated contract value should be provided **exclusive of VAT**.

Note that the Procurement Thresholds in the Procurement Regulations are subject to change and should be confirmed with Legal Services and Strategic Commissioning & Procurement.

### 4. Key Decisions

Notwithstanding the rules set out in this Procurement Thresholds Annex, where any procurement requires a Key Decision to be made, that Key Decision must be given and recorded before an Invitation to Quote or an Invitation to Tender is issued.

A Key Decision will be required in respect of any procurement that will:

- (a) incur expenditure of £200,000 or more; or
  - (b) have a significant impact on two or more Wards,
- ("Key Decision Threshold")

## **5. Exemptions**

Any exemption to the Contract Procedure Rules and/or the requirements set out in this Procurement Thresholds Annex must be in accordance with sections 19.14 to 19.18 of the Contract Procedure Rules and the Exemptions Annex. An exemption may not be used for an Above Threshold Procurement.

## **6. Frameworks**

There are a number of procurement organisations that provide a number of Frameworks that have been compliantly procured under the Procurement Regulations that the Council can call off. The Framework will have its own call-off process which could be a mini-competition or direct award. Strategic Commissioning & Procurement will offer support on finding suitable frameworks and support you through the process to award via the Framework.

Any procurement that uses a Framework must be compliant with the terms of the Framework and the Procurement Regulations.

## **7. Local suppliers**

Up to certain contract values (as set out in this Procurement Thresholds Annex), local suppliers are to be used where possible. Local suppliers are suppliers who are located within the Borough or Teesside and/or whose office or premises has a TS postcode.



## GOODS AND SERVICES

The following table sets out the procurement procedures that apply to the purchase of goods and services by the Council.

For the avoidance of doubt, goods and services includes the procurement of consultancy and other professional services, and the procurement of agency staff.

Value	Process	Exemption from Rules by	Decision to Award	Formalities	Authority to sign or seal contract	Other
Up to £10,000	Direct Award unless an appropriate contract already exists	Not applicable	Budget Manager, Head of Service or Chief Officer approval given.	Order raised on the Council's financial system (section 19.74.1 of the CPR)	Legal signature if contract if not then Chief Officer approval	Must demonstrate Best Value  Local suppliers to be used where possible
Above £10,000 and up to £213,477	At least 3 Quotations (section 19.56 of the CPR)  Option to issue Invitation to Tender (section 19.54 of the CPR)	Exemption process approved in line with section 1.14 to 1.18 of the CPR	Quotation evaluation outcome	Order raised on the Council's financial system (section 19.74.1 of the CPR)  Minimum contract requirements as set out in section 19.75.1 of the CPR	Legal memo submitted to legal with Chief Officer approval	Local suppliers to be used where possible  To be published on: <ul style="list-style-type: none"> <li>• E-tendering Portal</li> <li>• Contracts Finder</li> <li>• Find a Tender (if Invitation to Tender issued)</li> </ul>
Above £213,477 (an Above Threshold Procurement)	At least 5 Tenders	Exemptions cannot be made for contracts with	Tender evaluation outcome and Tender award briefing note	Formal contract	Legal memo submitted to legal with Chief Officer approval	Procurement Regulations apply

Value	Process	Exemption from Rules by	Decision Award to	Formalities	Authority to sign or seal contract	Other
		a value over this threshold.	approved by appropriate DMT			<p>To be published on:</p> <ul style="list-style-type: none"> <li>• E-tendering Portal</li> <li>• Contracts Finder</li> <li>• Find a Tender</li> </ul>

## LIGHT TOUCH REGIME

The Light Touch Regime applies to the procurement of public service contracts for social care services and certain other specified contracts pursuant to Regulation 5 of the Procurement Regulations as follows:

Value	Process	Exemption from Rules by	Decision to Award	Formalities	Authority to sign or seal contract	Other
Up to £10,000	Direct Award unless an appropriate contract already exists	Not applicable	Budget Manager, Head of Service or Chief Officer approval given.	Order raised on the Council's financial system (section 19.74.1 of the CPR)	Legal signature if contract if not then Chief Officer approval	Must demonstrate Best Value  Local suppliers to be used where possible
Above £10,000 and up to £663,540	At least 3 Quotations (section 19.56 of the CPR)  Option to issue Invitation to Tender (section 19.54 of the CPR)	Exemption process approved in line with section 1.14 to 1.18 of the CPR	Quotation evaluation outcome	Order raised on the Council's financial system (section 19.74.1 of the CPR)  Minimum contract requirements as set out in section 19.75.1 of the CPR	Legal memo submitted to legal with Chief Officer approval	Local suppliers to be used where possible  To be published on: <ul style="list-style-type: none"> <li>• E-tendering Portal</li> <li>• Contracts Finder</li> <li>• Find a Tender (if Invitation to Tender issued)</li> </ul>

Value	Process	Exemption from Rules by	Decision to Award	Formalities	Authority to sign or seal contract	Other
Above £663,540 (an Above Threshold Procurement)	At least 5 Tenders	Exemptions cannot be made for contracts with a value over this threshold.	Tender evaluation outcome and Tender award briefing note approved by appropriate DMT	Formal contract	Legal memo submitted to legal with Chief Officer approval	Procurement Regulations apply To be published on: <ul style="list-style-type: none"> <li>• E-tendering Portal</li> <li>• Contracts Finder</li> <li>• Find a Tender</li> </ul>

## WORKS

The following table sets out the procurement procedures that apply to the purchase of goods and services by the Council.

For the avoidance of doubt, these rules also apply to Concession Contracts (see section 19.92 of the CPR).

Value	Process	Exemption from Rules by	Decision to Award	Formalities	Authority to sign or seal contract	Other
Up to £10,000	Direct Award unless an appropriate contract already exists	Not applicable	Budget Manager, Head of Service or Chief Officer approval given.	Order raised on the Council's financial system (section 19.74.1 of the CPR)	Legal signature if contract if not then Chief Officer approval	Must demonstrate Best Value  Local suppliers to be used where possible
Above £10,000 and up to £250,000	At least 3 Quotations (section 19.56 of the CPR)  Option to issue Invitation to Tender (section 19.54 of the CPR)	Exemption process approved in line with section 1.14 to 1.18 of the CPR	Quotation evaluation outcome	Order raised on the Council's financial system (section 19.74.1 of the CPR)  Minimum contract requirements as set out in section 19.75.1 of the CPR	Legal memo submitted to legal with Chief Officer approval	Local suppliers to be used where possible  To be published on: <ul style="list-style-type: none"> <li>E-tendering Portal</li> <li>Contracts Finder</li> </ul> Find a Tender (if Invitation to Tender issued)

Value	Process	Exemption from Rules by	Decision to Award	Formalities	Authority to sign or seal contract	Other
Above £250,000 and up to £5,336, 937	At least 5 Tenders	Exemption process approved in line with section 1.14 to 1.18 of the CPR	Tender evaluation outcome and Tender award briefing note approved by appropriate DMT	Formal contract	Legal memo submitted to legal with Chief Officer approval	To be published on: <ul style="list-style-type: none"> <li>• E-tendering Portal</li> <li>• Contracts Finder</li> <li>• Find a Tender</li> </ul>
Above £5,336,937 (an Above Threshold Procurement)	At least 5 Tenders	Exemptions cannot be made for contracts with a value over this threshold.	Tender evaluation outcome and Tender award briefing note approved by appropriate DMT	Formal contract	Legal memo submitted to legal with Chief Officer approval	Procurement Regulations apply To be published on: <ul style="list-style-type: none"> <li>• E-tendering Portal</li> <li>• Contracts Finder</li> <li>• Find a Tender</li> </ul>