



# Contract Procedure Rules

## The Constitution: Part IV: Chapter 6

Issue Number	2.1	Date:	November 2012 (Updated Jan 2014 for threshold details)
Approved:	Audit & Governance Committee: 6 <sup>th</sup> November 2012	Date of Next Review:	March 2014 or as required
	Full Council: 26 <sup>th</sup> November 2012	Author:	D Jenkin / J Quick
	4.0 Draft for Audit & Governance Committee	19 April 2016	Andrew Waite
	4.1 Full Council	July 2016	Date of next review April 2018



## CONTENTS

### A BRIEF GUIDE TO CONTRACT PROCEDURE RULES

<b>SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES</b>		<b>Page No.</b>
<b>1</b>	BASIC PRINCIPLES	5
<b>2</b>	OFFICER RESPONSIBILITIES	5
<b>3</b>	WAIVERS, COLLABORATIVE & E-PROCUREMENT ARRANGEMENTS	6
<b>4</b>	RELEVANT CONTRACTS	11
<b>SECTION 2: COMMON REQUIREMENTS</b>		
<b>5</b>	STEPS PRIOR TO PURCHASE	12
<b>6</b>	RECORDS	12
<b>7</b>	ADVERTISING AND FRAMEWORK AGREEMENTS	13
<b>SECTION 3: CONDUCTING PURCHASE AND DISPOSAL</b>		
<b>8</b>	COMPETITION REQUIREMENTS FOR PURCHASE, DISPOSAL AND PARTNERSHIP ARRANGEMENTS	17
<b>9</b>	PRE-TENDER MARKET RESEARCH AND CONSULTATION	19
<b>10</b>	STANDARDS AND AWARD CRITERIA	21
<b>11</b>	PROCUREMENT DOCUMENTATION	23
<b>12</b>	SHORTLISTING	24
<b>13</b>	SUBMISSION, RECEIPT AND OPENING OF TENDERS/QUOTATIONS	24
<b>14</b>	CLARIFICATION PROCEDURES AND POST-TENDER NEGOTIATION	25
<b>15</b>	EVALUATION, AWARD OF CONTRACT, AND DEBRIEFING CANDIDATES	26
<b>SECTION 4: CONTRACT AND OTHER FORMALITIES</b>		
<b>16</b>	CONTRACT DOCUMENTS	28
<b>17</b>	BONDS AND PARENT COMPANY GUARANTEES	31
<b>18</b>	PREVENTION OF CORRUPTION	31
<b>19</b>	DECLARATION OF INTERESTS	32
<b>SECTION 5: CONTRACT MANAGEMENT</b>		
<b>20</b>	MANAGING CONTRACTS	33
<b>21</b>	RISK ASSESSMENT AND CONTINGENCY PLANNING	34
<b>22</b>	CONTRACT MONITORING, EVALUATION AND REVIEW	34
<b>SECTION 6: OTHER RELEVANT CONSIDERATIONS</b>		
<b>23</b>	STATE AID	36

## A BRIEF GUIDE TO CONTRACT PROCEDURE RULES

These Contract Procedure Rules (issued in accordance with section 135 of the 1972 Local Government Act) are intended to promote good procurement practice and public accountability and deter corruption. Following the rules is the best defense against allegations that a purchase has been made incorrectly or fraudulently.

Officers responsible for purchasing or disposal must comply with these Contract Procedure Rules. They lay down minimum requirements and a more thorough procedure may be appropriate for a particular contract.

(For example, if Rule 8.1 would normally require that quotes be obtained, it might be appropriate in particular circumstances to seek additional quotations or tender submissions. Equally, it may not always be appropriate to make use of a waiver under Rule 3 even if one might apply or be granted.)

For the purposes of these rules, where there is a requirement for communication to be in writing, this shall be deemed to include e-mail (or other e-communication systems e.g. e-tendering) fax transmissions as well as hard copy.

- Follow the rules whenever you purchase goods or services or order building work.
- Take all necessary procurement, legal, financial and professional advice.
- Declare any personal financial interest in a contract. Corruption is a criminal offence.
- Conduct any Value for Money review and appraise the purchasing need.
- All Tenders must be awarded on the basis of “the most economically advantageous tender”.
- Check whether there is an existing Corporate Contract or Framework Agreement in place you can make use of before undergoing a competitive process.
- Normally allow at least four weeks for submission of Bids (not to be submitted by hard copy, fax or e-mail) for more complex contracts.
- Keep Bids confidential.
- Complete a written contract and/or Council order before supply or works begin.
- Identify a contract manager with responsibility for ensuring the contract delivers as intended.
- Keep records of dealings with suppliers.
- Assess each contract afterwards to see how well it met the purchasing need and quality of delivery requirements.

In accordance with the Constitution, the Section 151 Officer may propose amendments to these Contract Procedure Rules after consultation with the Monitoring Officer, Governance Manager and the Procurement Officer. Proposed amendments must then be submitted to the Audit Governance Committee, with a recommendation to Full Council for approval, where appropriate.

## SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES

### 1 **BASIC PRINCIPLES**

All purchasing procedures and the letting of Concession Contracts must:

- Comply with these Contract Procedure Rules and Financial Regulations;
- Achieve Value for Money for public money spent (most economically advantageous tender);
- Be consistent with the highest standards of integrity, having regard to the Council's Anti Fraud and Corruption Strategy. The Bribery Act 2010 and the Office of Fair Trading guidance on Anti Competitive Behaviour;
- Ensure fairness in allocating public contracts;
- Comply with all legal requirements;
- Ensure that Non-commercial Considerations (except where related to quality assessments and Social Value) do not influence any Contracting Decision;
- Support the Council's corporate and departmental aims and policies; Comply with the Council's Procurement Strategies;
- Be followed by officers of the Council in all procurement activities including circumstances where there has been any challenge by the Community (Community Right to Challenge 2012 and Localism Act 2011).
- Comply with the Modern Slavery Act 2015 and any Council Policy on this matter.

1.1.2 *The Procurement Officer should be consulted prior to commencing any procurement process.*

### 2 **OFFICER RESPONSIBILITIES**

#### **Officers**

- 2.1 Officers responsible for purchasing or disposal must comply with these Contract Procedure Rules, Financial Instructions, the Code of Conduct and with all UK and European Union binding legal requirements. Officers must ensure that any Agents, Consultants and contractual partners acting on their behalf also comply.
- 2.2 The Procurement Officer must keep a register of all contracts and waivers. All contracts over £25,000 must be published on the Contracts Tender Portal (Contract Finder)
- 2.3 The Council's Monitoring Officer must arrange for the safekeeping of all signed contracts.

## SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES

- 2.4 When any employee either of the authority or of a service provider may be affected by any transfer arrangement, Officers must ensure that the Transfer of Undertaking (Protection of Employment) (TUPE) issues are considered and obtain legal advice before proceeding with inviting Tenders or Quotations.
- 2.5 Officers must:
- *Have regard to* the Council's purchasing and contract guidance
  - Ensure that the appropriate approved budgetary provision is in place.
  - Check whether a suitable Corporate Contract exists before seeking to let another contract; where a suitable Corporate Contract exists, this must be used unless there is an auditable reason not to
  - Keep the records required by Rule 6
  - Take all necessary legal, financial and professional advice.

### **Business Managers**

- 2.7 Operational and Strategic Managers must:
- Ensure that their staff comply with Rule 2.1

- 2.8 The Procurement Officer must keep a register of all contracts (see Rule 16.3) and waivers recorded under Rule 3.

### **3 WAIVERS, COLLABORATIVE & E-PROCUREMENT ARRANGEMENTS**

- 3.1 The Council has power to authorize waivers from the requirement to seek quotations or invite tenders for specific projects. All waivers shall be completed on the Standard Form of Waiver. **(No waiver can be used if the EU Procedure applies.)**
- 3.2 Where a waiver is necessary because of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to Council Services **(Life or Death, Increased Costs/Loss of Income, Limited Markets or Reputation)** the Officer must obtain the approval of the Section 151 Officer, Governance Manager and the Head of Paid Service. The Head of Paid Service may then approve the waiver but a report must be prepared for the next relevant committee to support the action taken. Where a contract will exceed £50,000 the Leader or Deputy Leader of the Council must additionally be consulted. Terms are defined as:
- Life or Death** – Is there a significant chance that the life or health of officers, members or the public will be put at real risk?

## SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES

- ☒ **Increased Costs/Loss of Income** – Will the Council incur significant avoidable costs or lose significant income (significant shall be taken to mean material in the sense that it is either material to the project, the service or the Council)?
- ☒ **Limited Markets** – Would the Council be wasting its time obtaining quotations as supply of the product or service is demonstrably restricted to one or few businesses (or an approved list if it is recommended by Central Government which evidences that the market has been tested)?
- ☒ **Reputation** – Would the Council be criticised for failing to act promptly?

## SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES

- 3.3 **No waiver can be used if the EU Procedure applies.** The latest EU limits should always be checked.
- 3.4 All waivers, and the reasons for them, must be recorded. Waivers shall be completed by the Officer and signed by the Section 151 Officer, Governance *Manager, Head of Paid Service and where relevant* the Leader/Deputy Leader of the Council.
- 3.5 Pro-formas must be used and are available on the Council's intranet or from Internal Audit who will monitor the use of waivers and ensure that all waivers are reported to the next relevant Committee.

### **In-House Awards or between Public Bodies**

- 3.6 Where the Council seeks to provide goods, works or services through its own internal resources it may do so without triggering a procurement exercise (links to Financial Procedure Rules).
- 3.7 Where the Council seeks to provide goods, works or services by entering in to a formal arrangement with another public sector body over which it has some ownership or control it may do so without triggering a procurement exercise where it can be demonstrated that:
- the contracting authority exercises over the contractor concerned a control which is similar to that which it exercises over its own departments ("similar control" in this context means the contracting authority exercising "a decisive influence over both strategic objectives and significant decisions" of the contractor. It includes where this control is exercised by another body, provided that the other body is itself controlled by the contracting authority); and
  - more than 80% of the activities of the contractor are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other bodies that are themselves controlled by that contracting authority; and
  - there is no private sector ownership of the contractor, with certain exceptions.

Or

Where the public sector body that is controlled by the Council seeks to provide goods, works or services by entering in to a formal arrangement with its controlling Council or another public sector body controlled by the same Council it may do so without triggering a procurement exercise where it can be demonstrated that a limited condition is met, that:

- there is no direct private capital participation in the body being awarded the *Contract*.

## SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES

Or

Where the Council seeks to provide goods, works or services by entering in to a formal arrangement with one or more public sector bodies over which it has no control it may do so without triggering a procurement exercise where it can be demonstrated that three limited conditions are met, that:

- the Council must exercise jointly with other public sector bodies “a control which is similar to that which it exercises over its own departments” over the body to be awarded the *Contract*;
- more than 80% of the activities of the body to be awarded the *Contract* must be carried out in the performance of tasks entrusted to it by the joint public sector bodies; and
- there must be no direct private capital participation in the body to be awarded the *Contract*.

Or

The Council and other public sector bodies can be said to exercise joint control over another body where all of the following conditions are met; that:

- the decision-making bodies of the controlled body are composed of representatives of all participating public sector bodies;
- the participating public sector bodies are able to jointly exert decisive influence over the strategic objectives and significant decisions of the body awarded the *Contract*; and
- the body to be awarded the *Contract* does not pursue any interests which are contrary to those of the controlling public sector bodies.

A *Contract* concluded exclusively between two or more public sector bodies may not trigger a procurement exercise where it can be demonstrated that three limited conditions are met, that:

- the *Contract* establishes or implements a co-operation between the participating public sector bodies with the aim of ensuring that public services they have to perform are provided with a view to achieving common objectives;
- the implementation of that co-operation is governed solely by considering relating to the public interest; and

## SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES

- the participating public sector bodies perform on the open market less than 20% of the activities with which the *Contract* is concerned.

### Collaboration

- 3.8 The Procurement Officer must be consulted prior to commencing a procurement process using any consortia contracts e.g. Crown Commercial Services (CCS), ESPO, LASAR etc. The terms and conditions of Contract applicable to any consortia arrangement, including the requirement to undertake competition between providers, must be fully complied with.
- 3.9 In order to secure Value for Money, the authority may enter into collaborative procurement arrangements. The Officer must consult the Procurement Officer where the purchase is to be made using collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium.
- 3.10 All purchases made via a consortium are deemed to comply with these Contract Procedure Rules and no waiver is required. However, purchases above the EU Threshold must be let under the EU Procedure, unless the consortium has demonstrated that it has satisfied this requirement already by letting their contract in accordance with the EU Procedures on behalf of the authority and other consortium members.
- 3.11 Any contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the Contract Procedure Rules of the leading organisation, will be deemed to comply with these Contract Procedure Rules and no waiver is required. However, advice **must** be sought from the Procurement Officer.
- 3.12 The use of e-procurement technology enhances the administrative process for tendering (audit trails etc.) but does not negate the requirement to comply with all elements of these contract procurement rules, particularly those relating to competition and Value for Money.

## SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES

### 4 **RELEVANT CONTRACTS**

4.1 All Relevant Contracts must comply with these Contract Procedure Rules. A Relevant Contract is any arrangement made by, or on behalf of, the authority for the carrying out of works or for the supply of goods, materials or services. These include arrangements for:

- The supply of goods;
- The hire, rental or lease of goods or equipment;
- The delivery of services, including (but not limited to) those related to:
  - the recruitment of staff;
  - financial and consultancy services;
  - Concession Contracts.

and where the Supplier is:

- Another public sector organization, to include a town and / or parish council
- A third sector organization, to include social enterprises, not-for-profit organisations or charities; and.
- A body wholly or jointly owned or controlled by the Council

4.2 Relevant Contracts do not include:

- Contracts of employment which make an individual a direct employee of the authority; or
- Agreements regarding the acquisition, disposal, or transfer of land (for which Financial Procedure Rules shall apply); or
- Section 151 Officer dealing in the money market or obtaining finance for the Council; or
- Contracts made by the Monitoring Officer for the appointment of counsel.

## SECTION 2: COMMON REQUIREMENTS

### 5 **STEPS PRIOR TO PURCHASE**

5.1 The Officer must appraise the purchase, in a manner commensurate with its complexity and value and taking into account any purchasing guidance, by:

Taking into account the requirements from any relevant Value for Money review

- Appraising the need for the expenditure and its priority;
- Defining the objectives of the purchase;
- Assessing the risks associated with the purchase and how to manage them;
- Considering what procurement method is most likely to achieve the purchasing objectives;, including internal or external sourcing, partnering, packaging strategy and collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium
- Consulting users as appropriate; about the proposed procurement method, contract standards and performance and user satisfaction monitoring
- Drafting the terms and conditions that are to apply to the proposed contract
- Setting out these matters in writing if the Total Value of the purchase exceeds £10,000;
- Ensuring the Social Value (Public Services) Act 2012 is complied with for all service contracts where the Total Value exceeds the EU Threshold;
- There is member or delegated approval for the expenditure and the purchase accords with the approved policy framework and scheme of delegation as set out in the Constitution.
- Taking into account the requirements from any relevant Value for Money review

### 6 **RECORDS**

6.1 Where the Total Value is less than £50,000, the following records must be kept:

- Invitations to quote and Quotations;

A record:

- of any waivers and the reasons for them;
- of the reason if the lowest price is not accepted (the most economically advantageous tender).
- Written records of communications with the contractors or an electronic record if not normally produced in writing e.g. Portal.

## SECTION 2: COMMON REQUIREMENTS

6.2 Where the Total Value exceeds £50,000 the Officer must record:

- The method for obtaining bids (see Rule 8.1);
- Any Contracting Decision and the reasons for it
- Any waiver under Rule 3 together with the reasons for it;
- The Selection Criteria;
- The Award Criteria;
- Invitation to Tender documents sent to and received from Suppliers;
- Pre-tender market research; clarification and post-tender negotiation (including minutes of meetings);
- Legal advice;
- The contract documents and any variations or extensions;
- Post-contract evaluation and monitoring;
- Communications with Suppliers and with the successful contractor throughout the period of the Contract;
- Ongoing checks through the contract.

6.3 Records required by this rule must be kept for six years (12 years if under seal) after the end of the contract. However, written documents, which relate to unsuccessful undisputed suppliers, must be destroyed after 12 months from award.

6.4 Where the Total Value exceeds the EU Threshold the officer shall draw up a written report including name, address of the Council, subject matter, contract value, results of selection (where applicable), names of tenderers and reasons for selection or rejection, justification for procedure, reasons for non-award, conflicts of interest etc. as set out in EU Legislation. The Contract Award Notice should contain this information.

## **7 ADVERTISING. AND FRAMEWORK AGREEMENTS**

### **7.1 Identifying and Assessing Potential Candidates**

#### **Identifying:**

7.1.1 Wherever practicable Officers shall ensure that where the Total Value of the proposed Contract does not exceed £50,000 they shall invite a minimum of three suppliers, one of whom has their Registered Head Office in North Devon. Officers shall be seen to alternate suppliers wherever possible to ensure fair competition.

Advertisements must be placed on the Councils electronic portal and Contracts Finder. All information shall be offered unrestricted and with free access where electronic.

## SECTION 2: COMMON REQUIREMENTS

Advertisements may also be placed in:

- The Council's website
- Portal websites specifically created for contract advertisements
- National official journals, or
- The Official Journal of the European Union (OJEU)/E Notices/Tenders Electronic Daily (TED) (even if there is no requirement within the EU Procedure). But this **must** be used for contracts over the threshold.

7.1.2 For proposed contracts that are expected to exceed £50,000, assessment and selection will be in conjunction with the Procurement Officer.

### **Assessing:**

7.1.3 Officers are responsible for ensuring that all Suppliers for a Relevant Contract are suitably assessed in accordance with the Public Contracts Regulations 2015. The assessment process shall establish that the potential Suppliers have relevant and proportionate requirements or minimum standards for:

- Economic and financial standing;
- Technical ability and capacity;
- Health and Safety,
- Legal Status

7.1.4 The use of pre qualification stages is not permitted under the EU Threshold. Use of PAS 91 or other prequalification systems is permitted.

## **7.2 Approved Lists**

7.2.1 Approved Lists will not be maintained due to the costs of proper administration and the need to ensure that competition is maximised.

7.2.2 Suppliers interested in doing business with the Council must register on the Council's e-tendering system, which is available at [www.supplyingthesouthwest.org.uk](http://www.supplyingthesouthwest.org.uk).

7.2.3 A register of pre-qualified contractors and consultants maintained by or on behalf of central government (e.g. Constructionline, Accredited) will not be deemed to be an Approved List for the purpose of these Contract Procedure Rules.

## **7.3 Framework Agreements**

7.3.1 A Framework Agreement is an arrangement of one or more contracting authorities with one or more suppliers in order to establish the terms governing the contracts awarded during a given period.

## SECTION 2: COMMON REQUIREMENTS

7.3.2 The term of a Framework Agreement must not exceed four years. There must be one (a single-provider framework), or more than two (2) (multi-provider framework) Suppliers within an agreement under EU procurement law.

7.3.3 Contracts based on Framework Agreements may be awarded by either:

- Applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition (also known as a direct award); or
- Where the terms laid down in the Framework Agreement are not precise enough or complete for the particular call off by holding a **mini competition** in accordance with the following procedure:
  - inviting the organisations within the Framework Agreement that are capable of executing the subject of the contract to submit written Tenders
  - fixing a time limit which is sufficiently long to allow Tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract
  - awarding the contract to the tenderer who has submitted the best Tender on the basis of the Award Criteria set out in the specifications of the Framework Agreement.

7.3.4 Contracts based on a *Framework Agreement* may under no circumstances entail substantial modifications to the terms laid down in that *Framework Agreement*.

7.3.5 When a *Framework Agreement* has been selected for use, only the *suppliers* that appear on the agreement may be approached to provide the Contract. Multiple *Framework Agreements* may not be selected for use to procure one single *Contract*.

7.3.6 Contracts may be awarded beyond the life of a *Framework Agreement* provided that such contracts are not awarded improperly or in a way that seeks to distort competition. As an example it would serve to distort competition to award a *Contract* that significantly exceeded the life of the *Framework Agreement* where it was not common practice nor expected by the market to do so.

7.3.7 A *Contract* procured under a *Framework Agreement* by another user may not be used by way of avoiding running a further competition, unless expressly permitted by the terms of the *Framework Agreement* or resultant call-off contract.

## SECTION 2: COMMON REQUIREMENTS

7.3.8 The *Standstill* obligations need only be applied to contracts awarded against a *Framework Agreement* that will exceed the *EU Threshold*.

## SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

### **8 COMPETITION REQUIREMENTS FOR PURCHASE AND PARTNERSHIP ARRANGEMENTS**

#### **8.1 Purchasing – Requirements to Obtain Quotations or Tenders**

8.1.1 The **Total Value** of a Contract is the whole of the value or estimated value (in money or equivalent value) for a single purchase, e.g. 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, including any permitted extensions.

8.1.2 Where the Total Value for a purchase is within the values in the first column below, the Award Procedure in the second column must be followed. Short listing shall be done by the persons specified in the third column.

Total Value (excl. VAT)	Award Procedure	Short listing
Up to £7,500	A minimum of one Quotation, but good practice to seek most favourable prices and terms.	Operational Manager/Other Designated Officer
£7,500 - £50,000	A minimum of three written Quotations.  All “High” rated contracts must be via an e-procurement route.	Operational Manager/Other Designated Officer
£50,001–EU Threshold	Invitation to Tender by advertisement or select list and use of e-procurement	Operational Manager/Other Designated Officer in consultation with the Procurement Manager
Above EU Threshold	EU Procedure or, where this does not apply, Invitation to Tender by Advertisement.	Operational Manager/Other Designated Officer in consultation with the Procurement
£50,001 – EU Threshold	All purchases made via a local authority purchasing and distribution consortium are deemed to comply with these Contract Procedure Rules and no waiver is required e.g. Devon Procurement Services.  However, purchases above the EU Threshold must be let under the EU Procedure, unless the consortium has satisfied this requirement already.	See paragraph 3.7.

## SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

Total Value (excl. VAT)	Award Procedure	Short listing
All values. Collaborative Contracts	The Procurement Officer must be consulted prior to commencing any procurement using collaborative contracts. The terms and conditions of Contract applicable to any collaborative Contract, including the requirement to undertake competition between providers, must be fully complied with.	See paragraph 3.6
All values. ICT	All system developments and purchases of computer equipment or software must be approved by the ICT Manager, and awarded in line with these Rules.	Operational Manager/Other Designated Officer the Council's designated ICT Manager

- 8.1.3 Where it can be demonstrated that there are insufficient suitably qualified suppliers to meet the competition requirement, all suitably qualified suppliers must be invited to quote or Tender. If it can be clearly demonstrated that less than the required quotations are available, then the Waiver procedure in line with paragraph 3 must be followed.
- 8.1.4 An Officer must not overtly enter into separate contracts nor select a method of calculating the Total Value in order to minimise the application of these Contract Procedure Rules or EU procurement rules.
- 8.1.5 Where the EU Procedure is required, the Officer shall also consult the Procurement Officer, to determine the method of conducting the purchase.
- 8.1.6 Where the Council procures on behalf of itself and other partners the total value is the overall contract value not just the element that each Council or partner bears. In such shared contracts, the costs of provision of the contract should be transparent to all parties.

## SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

### **8.2 Contracts to Provide Services to External Purchasers**

- 8.2.1 The Council does not procure contracts for third parties where there is no Council interest or involvement, except with the approval of the Monitoring Officer and Procurement Officer.

### **8.3 Collaborative and Partnership Arrangements**

- 8.3.1 Collaborative and partnership arrangements are subject to all UK and EU procurement legislation and must follow these Contract Procedure Rules. If in doubt, Officers must seek the advice of the Council's Solicitor.

### **8.4 The Appointment of Consultants to Provide Services**

- 8.4.1 Construction Consultants, to include architects, engineers and surveyors, financial and management Consultants, legal advisors and Consultants and any other professional persons considered Consultants as per the definition provided shall be selected and commissions awarded in accordance with the limits and procedures detailed within these Contract Procedure Rules.
- 8.4.2 The engagement of a Consultant shall follow the agreement of a brief that adequately describes the scope of the services to be provided and shall be subject to completion of a formal letter or Contract of appointment to be in the form agreed by the Council's Senior Solicitor. In most cases the relevant professional body will have an applicable form of appointment.
- 8.4.3 Records of consultancy appointments shall be maintained in accordance with Rule 6.
- 8.4.4 Consultants shall be required to provide evidence of, and maintain professional indemnity insurance policies to the satisfaction of the Council's Insurance Officer for the periods specified in the respective agreement.

## **9 PRE-PROCUREMENT ENGAGEMENT AND CONFLICT OF INTEREST**

- 9.1 All suppliers must be treated equally with no distortion of competition or Transparency. Where irreversible conflicts of interest exist suppliers can be excluded.
- 9.2 The Officer responsible for the purchase: may, prior to the issue of the Invitation to Tender or Quotation, consult potential suppliers in general terms about the nature, level and standard of the supply and other relevant matters, provided this is not anti competitive or a breach of transparency and non-dissemination principles. All relevant information gathered must be disseminated to all suppliers

## SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

- 9.3 The *Officer* shall take appropriate measures to ensure that competition is not distorted, including:
- communicating to the other *Tenderers* any relevant information exchanged resulting from the involvement of the *Supplier/s*; and
  - fixing adequate time limits for the receipt of *Tenders*.
- 9.4 For service contracts where the Total Value will exceed the EU Threshold the *Officer* must give due consideration to the Social Value (Public Services) Act 2012 prior to the commencement of the procurement process.

### 10 STANDARDS AND AWARD CRITERIA

Principle: All contract awards must now be made to the “most economically advantageous tender”, using a cost effectiveness approach such as life-cycle costing to assess this; this may include best ‘price-quality ratio’ – as assessed on the basis of award criteria.

10.1 The Officer must define the Selection Criteria that are relevant and proportionate to the subject matter of the Contract. Pre Qualification Questionnaires may not be used below EN thresholds and only suitable assessment questions shall be asked below this level. The PAS 91 CCS Format should be used in all cases where the contract is published by EOI.

10.2 Selection Criteria must not include:

- Award Criteria;
- Non-commercial Considerations;
- Criteria that is not related and proportionate to the subject matter of the contract.

It can include:

- criteria for the mandatory exclusion of the *Supplier*, such as conspiracy, prior criminal convictions, evidence of corruption, bribery, fraud, terrorism, money laundering, tax evasion, etc. (this list is not exhaustive);
- criteria for the discretionary exclusion of the *Supplier*, such as bankruptcy, grave professional misconduct, evidence of distorting competition, conflict of interest, significant deficiencies in the delivery of a prior public contract, etc. (this list is not exhaustive);
- information as to economic and financial standing; such as, insurances, statements of accounts, statements of turnover, etc. (this list is not exhaustive); and
- information as to technical or professional ability; such as
- the *Supplier's* professional ability, taking into account in particular that economic operator's skills, efficiency, experience and reliability;
- evidence of a sufficient level of experience demonstrated by suitable references from contracts performed in the past; and
- evidence that the *Supplier* possesses the necessary human and technical resources and experience to perform the contract to an appropriate quality standard (this list is not exhaustive).

## SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

- 10.3 The Officer must ascertain what are the relevant British, European or international standards which apply to the subject matter of the contract. The Officer must include those standards which are necessary properly to describe the required quality. This includes sustainability, environmental, and health and safety British or EU standards.
- 10.4 The Officer must define Award Criteria that are appropriate to the purchase and designed to secure an outcome giving Value for Money for the authority. The basic criteria shall be:
- 'Lowest price' where payment is to be made by the authority when the Award Criteria is price alone;.
  - 'Highest price' if payment is to be received; or
  - 'Most economically advantageous', where considerations in addition to price also apply.

If the former criterion is adopted, it must be further defined by reference to sub- criteria which may refer only to relevant considerations. These may include price, service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, , relevant environmental considerations, aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance and any other relevant matters. Award Criteria must be accompanied by the relative weightings ranked in order of importance to the Council in the context of the specific procurement.

- 10.5 Award criteria must not include:
- Selection Criteria;
  - Non-commercial Considerations
  - Matters which discriminate against suppliers, irrespective of size, from the European Economic Area or signatories to the Government Procurement Agreement;
  - Criteria that is not related and proportionate to the subject matter of the Contract.

## SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

### 11. PROCUREMENT DOCUMENTATION

- 11.1 Council Officers must prepare their Procurement Documentation using the Council's standard templates, which are available on the Council's Intranet site or via the Procurement Team and are appropriate to the size and nature of the contract.
- 11.2 The Procurement Documentation shall state that no Bid will be considered unless it is received by the date and time stipulated. A Bid delivered in contravention of this clause shall be considered only under exceptional circumstances, e.g. Council error/council software breakdown.
- 11.3 All Procurement Documentation can include the following as appropriate to the type of Contract:
- (a) A specification that describes the authority's requirements in sufficient detail to enable the submission of competitive offers;
  - (b) A requirement for Suppliers to declare that the Bid content, price or any other figure or particulars concerning the Bid have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose);
  - (c) A requirement for Suppliers to complete fully and sign all Bid documents including a form of Tender and Terms and Conditions;
  - (d) Notification that Bids are submitted to the Council on the basis that they are compiled at the Supplier's expense;
  - (e) A description of the Award Procedure and, unless defined in a prior advertisement, a definition of the Award Criteria in objective terms and if possible in descending order of importance;
  - (f) Notification that no Bid will be considered unless it is
    - Enclosed in a sealed envelope or container (electronic) which bears the word 'Tender' followed by the subject to which it relates, but no other name or mark indicating the sender; or
    - submitted via the Council's approved electronic tendering system
  - (g) Quotations by email are acceptable for tenders under £7,500, but must be dated and clearly stated.
  - (h) The method by which any arithmetical errors discovered in the submitted Bids is to be dealt with. In particular, whether the overall price prevails over the rates in the Tender or vice versa;

## SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

- (i) Instructions to Suppliers concerning the procurement process and Procurement Documentation and information concerning the contract opportunity;
  - (j) The pricing schedule, schedule of rates, whole life costing schedule or other such appropriate pro-forma for gathering the Supplier's pricing.
  - (m) a stipulation that no tender issued electronically via the Portal can be submitted by other means.
  - (n) details of any subcontractors and consortium arrangements.
- 11.4 All Suppliers invited to bid must be issued with the same information at the same time and be subject to the same conditions. Any supplementary information must be given on the same basis.
- 11.5 All Procurement Documentation must specify the goods, service or works that are required, together with the terms and conditions of Contract that will apply and must state that the Council is not bound to accept any Quotation or Tender, either as a whole or in part.

## 12 **SHORTLISTING**

- 12.1 Any Shortlisting must be done in accordance with the permitted Selection Criteria and without a Prequalification Stage. Where the Total Value of the Contract will exceed the EU Threshold, the Officer must contact the Procurement Officer for advice.
- 12.2 Evaluation criteria must be transparent and any sub-criteria specified. Short listing records must be kept and held for the period specified in the Council's Data Retention Policy and Rule 6.

## 13 **SUBMISSION, RECEIPT AND OPENING OF TENDERS / QUOTATIONS**

- 13.1 Suppliers must be given an adequate period in which to prepare and submit a proper Quotation or Tender, consistent with the complexity of the contract requirement. Normally at least four weeks should be allowed for submission of Tenders. The EU Procedure lays down specific time periods.
- 13.2 Each Tender must be:
- Recorded immediately on receipt in the Tender Register;
  - Adequately protected immediately on receipt to guard against amendment of its contents;
  - Suitably recorded so as to subsequently verify the date and precise time it was received.

## SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

- 13.3 Tenders received after the set date and time must not be accepted and the Procurement Officer informed of late submissions. For the purposes of these rules the time will be deemed to be at the first stroke e.g. noon will be 12.00.00.
- 13.4 The Officer or Procurement Officer must ensure that all Tenders are opened at the same time when the period for their submission has ended. The Officer or his or her representative must be present. Tenders must be opened in the presence of an officer representing the Service Lead. Where the Total Value is more than the EU Threshold, the Procurement Officer shall also attend.
- 13.5 Upon opening, a summary of the main terms of each Tender (i.e. significant issues that are unique to each Tender submission and were not stated in the Tender invitation documents such as Tender sum) must be verified on the electronic tendering system (if applicable) and recorded in the Tender Register. The summary must be signed by all present. Where an electronic tendering process is used, those involved must verify the results on the electronically submitted documents.

### 14. CLARIFICATION PROCEDURES AND POST-TENDER NEGOTIATION

- 14.1 Providing clarification of an Invitation to Tender to potential or actual Suppliers is permitted:
- Via the Council's electronic tendering system;
  - At a meeting, provided that a written record is made of the meeting;
  - In a way that is fair, transparent and equal to all participants.
- 14.2 Discussions with tenderers after submission of a Tender and before the award of a Contract with a view to obtaining adjustments in price, delivery or content (i.e. post-tender negotiations) **must be the exception** rather than the rule. In particular, they must not be conducted in an EU Procedure where this might distort competition, especially with regard to price. If in doubt, seek professional advice from the Procurement Officer
- 14.3 If post-tender negotiations are necessary after a single-stage Tender or after the second stage of a two-stage Tender, then such negotiations shall only be undertaken with the tenderer who is identified as having submitted the best Tender and after all unsuccessful Suppliers have been informed. Officers carrying out post-tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.
- 14.4 Where post-tender negotiations result in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.

## SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

### 15. EVALUATION, AWARD OF CONTRACT, DEBRIEFING CANDIDATES

- 15.1 Apart from the debriefing required or permitted by these Contract Procedure Rules, the confidentiality of Quotations, Tenders and the identity of Suppliers must be preserved at all times and information about one Supplier's response must not be given to another Supplier.
- 15.2 Tenders and Quotations must be evaluated and awarded in accordance with the Selection and Award Criteria. During this process, Officers shall ensure that submitted Tender prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.
- 15.3 The arithmetic in compliant Tenders must be checked. If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm or withdraw their Tender.
- 15.4 Officers may accept Quotations and Tenders received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these Contract Procedure Rules. Awarding of contracts that are expected to exceed the approved budget sum shall be referred back to the Section 151 Officer as appropriate, in line with the Scheme of Delegation.
- 15.5 Where the Total Value is over £50,000, the Officer must notify all Suppliers in writing simultaneously and as soon as possible of the intention to award the contract to the successful Supplier and include the reasons why for unsuccessful bidders. Where an unsuccessful Supplier requests debrief information the Officer may use their discretion in deciding whether or not to comply with the request; there is no legal obligation imperative on the Officer to do so.
- 15.6 Where the **Total Value will exceed the EU Threshold** the Officer must notify all Suppliers in writing simultaneously and as soon as possible of the intention to award the Contract to the successful Supplier, unless it is known sooner in the procurement process that a Supplier has been unsuccessful, in which case the Officer must notify the Supplier soonest with as much of the information required at 15.8 below as possible. (See 15.9 for further details).
- 15.7 The letters to the unsuccessful Suppliers must contain:
- The criteria for the award of the Contract;
  - The reasons for the decision, including the characteristics and relative advantages of the successful Tender, the score (if any) obtained by:
- the Supplier which is to receive the notice; and  
the Supplier to be awarded the Contract.

### SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

- The name of the Supplier to be awarded the Contract;
  - A precise statement of either:
    - when the Standstill Period is expected to end and, if relevant, how the timing of its ending might be affected by any and, if so what, contingencies; or
    - the date before which the Council will not enter into the Contract or conclude the Framework Agreement or Dynamic Purchasing System.
- 15.8 The Officer must provide a Standstill Period of at least ten working days, for EU threshold contracts where the communication is made electronically (fifteen days if not) to allow unsuccessful Suppliers the opportunity of challenging the decision before the Officer awards the Contract. The Standstill Period shall end at midnight on the final day of Standstill and no sooner. Where the last day of the Standstill Period is not a working day, the Standstill Period is extended to midnight at the end of the next working day. If the decision is challenged by an unsuccessful Supplier then the Officer shall not award the Contract and shall immediately seek the advice of the Monitoring Officer and Procurement Officer.
- 15.9 Where the Supplier has been informed of the fact that they have not been successful at an early stage in the procurement process, they must be provided within fifteen days of any request in writing from said Supplier, with the reasons that they were unsuccessful.

## SECTION 4: CONTRACT AND OTHER FORMALITIES

### 16 CONTRACT DOCUMENTS

#### 16.1 **Relevant Contracts**

16.1.1 All Relevant Contracts above £7,500 shall be **in writing** in a form approved by the Monitoring Officer.

16.1.2 All Relevant Contracts, irrespective of value, shall clearly specify:

- What is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done);
- The provisions for payment (i.e. the price to be paid and when);
- The time, or times, within which the contract is to be performed;
- The provisions for the Council to terminate the contract.

16.1.3 The Council's purchase orders or standard terms and conditions issued by a relevant professional body must be used for simple purchases of goods and works.

16.1.4 In addition, every Relevant Contract of purchase over £50,000 must also state clearly as a minimum:

- Health and Safety requirements (where applicable and proportionate);
- Sustainability and environmental management requirements (where applicable and proportionate);
- Social Value Act requirements (where applicable, i.e. for service Contracts with a Total Value in excess of the EU Threshold);
- Equality Act 2010 requirements (where applicable and proportionate);
- That the contractor may not assign or sub-contract without prior written consent;
- Any insurance requirements;
- Ombudsman requirements;
- Data protection requirements, if relevant;
- That charter standards are to be met if relevant;
- Bribery and whistleblowing policies;
- Freedom of Information Act requirements;
- Where Agents are used to let contracts, that Agents must comply with the Council's Contract Procedure Rules;
- A right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant;
- Any confidentiality requirements;
- Tax evasion and avoidance requirements.
- A prompt payment clause.
- Termination clauses compliant with the Public Contracts Regs 2015.

## SECTION 4: CONTRACT AND OTHER FORMALITIES

16.1.5 The formal advice of the Monitoring Officer must be sought for contracts where any of the following apply:

- Where the Total Value exceeds £50,000; or
- Below £50,000 if other than the Council's standard terms and conditions are to be used; or
- Those involving leasing arrangements (Section 151 Officer to be advised); or
- Where it is proposed to use a supplier's own terms; or
- Those involving the purchase of application software with a Total Value of more than £50,000; or
- Those that are complex in any other way.

### 16.2 Contract Formalities

16.2.1 Agreements shall be completed as follows and in all cases an official order issued.

Total Value	Method of Completion	By
Purchase orders - up to £50,000	Electronic Order or Signature	Authorised officer (see Rule 16.2.3)
Contracts and licences up to £50,000 with the Council's Standard Terms and Conditions	Signature	Monitoring Officer or Deputy
Contracts and licences up to £50,000 with Non Standard Terms and Conditions	Signature	Monitoring Officer or Deputy
Above £50,000 or if any of para 16.1.5.	Signature or Sealing (unless advised by the Council's Solicitor that sealing is not necessary)	Monitoring Officer or Deputy
<b>ICT</b> - system developments and purchases of computer equipment or software	Method of completion in line with limits above	As above, except in all cases to involve the Council's designated Business Transformation Manager.

## SECTION 4: CONTRACT AND OTHER FORMALITIES

16.2.2 All contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the Monitoring Officer, Deputy or Section 151 Officer. An award letter is insufficient.

16.2.3 The Officer responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it. The use of Letters of Intent (which are binding for the Council) should be avoided, but in exceptional circumstances they may be used with the approval of and review by the Monitoring Officer before issue.

16.2.4 Any new Contract should not be signed until the Contract it replaces is either ended or under notice.

16.2.5 All original contracts must be given to the Monitoring Officer for secure storage and Procurement Team notified for recording in the Council's Contract Register.

16.2.6 Contract Awards Notices must be placed on the Councils tendering system and Contracts Finder.

### 16.3 Sealing

16.3.1 Where appropriate contracts are completed by each side adding their formal seal. The fixing of the Council's seal must be witnessed by a further officer on behalf of the Monitoring Officer or deputy.

16.3.2 Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal. The seal must not be affixed except in accordance with the Council's Constitution.

16.3.3 A contract must be sealed where:

- The Council may wish to enforce the contract more than six years after its end;
- The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services, or
- There is any doubt about the authority of the person signing for the other contracting party.

## SECTION 4: CONTRACT AND OTHER FORMALITIES

### 17 BONDS AND PARENT COMPANY GUARANTEES

17.1 The Officer must consult the Procurement Officer about whether a Parent Company Guarantee is necessary when a Candidate is a subsidiary of a parent company and:

The Total Value exceeds £75,000, or  
Award is based on evaluation of the parent company, or there is some concern about the stability of the Candidate.

17.2 The Officer must consult the Section 151 Officer about whether a Bond is needed:

Where the Total Value exceeds £1,000,000, or  
Where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the Candidate i.e. following a formal risk assessment.

### 18 PREVENTION OF CORRUPTION

#### 18.1 Prevention of Corruption

18.1.1 The Officer needs to be aware of the Bribery Act 2010 which introduces general offences of offering or receiving bribes, a specific offence of bribing a foreign public official, and the new corporate offence of failing to prevent bribery.

18.1.2 The Officer must comply with the 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 Officer to prove that anything received was not received corruptly.

#### 18.2 Anti Competitive Behaviour

18.2.1 In their guidance for public sector procurers, the Office of Fair Trading has highlighted practical steps to take to reduce the risks of anti competitive behaviour, which should be followed where practical:

- a) Use non-collusion clauses, certificates of independent bids and requests;
- b) Ensure sufficient credible bidders;
- c) Look for suspicious bidding patterns
- d) Keep good notes of all discussions and potential bidders and systematically scrutinise them for suspicious patterns e.g. geographical prevalence of certain suppliers' areas.

## SECTION 4: CONTRACT AND OTHER FORMALITIES

18.2.2 If there is any doubt during a procurement exercise, or for further guidance, the Officer should contact the Procurement Officer or Internal Audit.

### 19. DECLARATION OF INTERESTS

19.1 If it comes to the knowledge of a member or an employee of the authority that a contract in which he or she has an interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Monitoring Officer. (See Definitions Appendix for description of Interest)

19.2 All Councillors must comply with the Members' Code of Conduct and register all contracts for goods, services or works made between the Council and:

- The Councillor;
- A firm in which s/he is a partner;
- A company in which s/he is a remunerated director;
- A member of the Councillor's family or a person with whom they have a close association, or a partnership or company employing or operated by such a person;
- Any person or body who has a place of business in the Torridge District Council area and in which the Councillor has a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 (or one hundredth of the total issued share capital) whichever ever the lower.

19.3 The Monitoring Officer shall maintain a record of all declarations of interests notified by members and Officers.

## SECTION 5: CONTRACT MANAGEMENT

### 20. **MANAGING CONTRACTS**

20.1 **Senior Management Team must appoint contract managers for all new contracts.** All contracts must have a named Council contract manager for the entirety of the contract.

20.2 Contract managers must follow best practice in the area of supplier relationship and contract management.

20.3 **Variations or Extensions** should not be made unless this is provided for in the Invitation to Tender and the Contract itself or as permitted in the Public Contracts Regulations 2015. Any **variations or extensions** to contracts are to be in writing in the form approved by the Monitoring Officer, sequentially numbered and stored with the original Contract.

Variations or extensions proposed by the Officer that are likely to be considered as 'materially different' from the original Contract, include:

- When the amendment introduces conditions which, had they been part of the original procurement process, would have allowed for the admission of different Tenders or the acceptance of a Tender other than the one accepted;
- When the amendment "extends the scope of the Contract considerably to encompass goods, works or services not initially covered";
- When the amendment changes the economic balance of the Contract in favour of the contractor; or
- When there is a change of main contractor, change of ownership of the main contractor, a transfer of shares in the main contractor or a change of sub-contractor where the inclusion of a sub-contractor is inherent to the decision to award the Contract.

These variations or extensions are unlikely to be permitted on the basis that the proposed Contract will be fundamentally different from the old and therefore will a re-tender will be required.

20.4 **Payments** to contractors will only be made on certification of the designated contract manager, in line with the Financial Procedure Rules or where engaged by the Council, external architect, engineer or consultant.

20.5 **Liquidated and ascertained damages** must be deducted for all periods of delay in line with the terms of the contract.

20.6 The Officer / Contract Manager will consult with the responsible Strategic Manager, the Monitoring Officer and the Section 151 Officer promptly on becoming aware of any significant **dispute, claim for additional payment** in connection with a contract.

## SECTION 5: CONTRACT MANAGEMENT

### 21. **RISK ASSESSMENT AND CONTINGENCY PLANNING**

- 21.1 A business case must be prepared for all procurements with a potential value over the EU Threshold. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.
- 21.2 For all contracts with a value of over £50,000, contract managers must:
- Maintain a risk register during the contract period;
  - Undertake appropriate risk assessments and for identified risks; ensure contingency measures are in place

### 22. **CONTRACT MONITORING, EVALUATION AND REVIEW**

- 22.1 All Contracts which have a value higher than the EU Threshold limits, or which are High Risk, are to be subject to formal review(s) by the contract manager with the contractor. The review may be conducted at a frequency that is determined by the risk value and profile of the Contract.
- 22.2 During the life of the contract, the Officer must monitor and take any necessary corrective action in respect of:
- Performance;
  - Compliance with specification and contract;
  - Cost;
  - Any Value for Money requirements;
  - User satisfaction and risk management.
- 22.3 When the Contract is completed the Contract Manager must submit a Performance Project Review to the Asset & Capital Monitoring Group. The report must evaluate the extent to which the purchasing need and the contract objectives were met by the contract.

#### **Additional Requirements for Contracts Financed from the Capital Programme**

- 22.4 Any Officer proposing a project for inclusion in the Capital Programme must complete a Project Initiation Document (PID), and have this signed as approved by their Strategic Manager. The PID must then be submitted to the Section 151 Officer, who will refer the project to the relevant Committee for approval.
- 22.5 The Project Initiation Document will include the objectives of the project; a risk assessment and contingency plan; details of how the project will be controlled including appointment of a Project Manager; funding required and any revenue impact that the project may incur.

## SECTION 5: CONTRACT MANAGEMENT

- 22.6 The Property Manager will provide the Strategic Management Team with a monthly report on the overall progress of the Capital Projects and the financial aspect will be considered at each Asset & Capital Monitoring Meeting.
- 22.7 **Overspends** – in monitoring expenditure on a project, the Officer / Project Manager shall notify the Section 151 Officer, Senior Management Team and Members at the earliest opportunity where the approved expenditure appearing in the capital programme is likely to be exceeded. Authorisations for additional spend should be requested in accordance with the Financial Procedure Rules (Virement Rules).

### 23. **STATE AID**

#### **Definition**

23.1 State aid can be defined as any assistance offered by a public sector body in any form whatsoever that distorts or threatens to distort competition by favouring certain organisations and / or Suppliers or the production of certain goods. Such aid may take the form of a grant (capital injection), business tax relief, a reduction in rent or preferential finance (this is not an exhaustive list).

23.2 Where the Council wishes to administer aid in this manner careful consideration must be given prior to such a grant so as to ensure that it is compatible with EU law. Aid that is not compatible with EU law may be recovered from the beneficiary with interest.

23.3 For a grant to be considered as State Aid the following cumulative criteria must be met:

- The beneficiary receives a grant of a benefit or advantage; and
- The aid is given by a Member State or through state resources; and
- The beneficiary receives the aid on a selective basis; and
- The aid granted distorts or threatens to distort competition; and
- The aid is capable of affecting trade between Member States

Granted aid must fulfil all of these criteria in order to be deemed as a State Aid for the purposes of EU law.

23.4 Where a grant is defined as State Aid it must be notified in sufficient time to the European Commission. Aid will not be permitted to be bestowed upon the beneficiary until the Commission has reached a decision as to whether it can be deemed as compatible with EU law or not. Where Aid is incompatible the Council will not be permitted to grant it.

#### **Exemptions for State Aid**

23.5 Besides seeking approval from the European Commission, State Aid can be said to be compatible with EU law and can therefore be granted legally if:

- For the most part the total de minimis Aid given to a single recipient is less than €200,000 over a 3-year fiscal period;
- Aid in favour of Small, Medium Enterprises, research, innovation, regional development, training, employment of disabled and disadvantaged workers, risk capital and environmental protection;
- Aid measures promoting female entrepreneurship, such as aid for young innovative businesses, aid for newly created small businesses

## SECTION 6: OTHER RELEVANT CONSIDERATIONS

in assisted regions, and measures tackling problems like difficulties in access to finance faced by female entrepreneurs.

- 23.6 Such Aid must still be notified to the European Commission and as a result Council Officers are advised to seek the advice and guidance of the Monitoring Officer and Corporate Procurement Officer where State Aid may be said to exist on a particular project or procurement.

DEFINITIONS APPENDIX	
<b>Agent</b>	A person or organisation acting on behalf of the Council or on behalf of another organisation.
<b>Approved List</b>	A list drawn up in accordance with Rule 7.2.
<b>Award Criteria</b>	The criteria by which the successful <u>Quotation</u> or <u>Tender</u> is to be selected (see further Rules 10 and 11.2e).
<b>Award Procedure</b>	The procedure for awarding a contract as specified in Rules 8, 10 and 15.
<b>Best Value</b>	The duty, which Part I of the Local Government Act 1999 places on local authorities, to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the Council. This terminology has now in many instances been superseded by <u>Value for Money</u> .
<b>Bond</b>	An insurance policy: if the contractor does not do what it has promised under a 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.
<b>Candidate</b>	Any person who asks or is invited to submit a <u>Quotation</u> or <u>Tender</u> .
<b>Code of Conduct</b>	The code regulating conduct of Officers, available on the Council's Intranet.
<b>Constitution</b>	The constitutional document approved by the Council which: allocates powers and responsibility within the Council and between it and others delegates authority to act, Other Member Bodies and Officers; regulates the behaviour of individuals and groups through rules of procedure, codes and protocols.
<b>Consultant</b>	Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the Council has no ready access to employees with the skills, experience or capacity to undertake the work.
<b>Contracting Decision</b>	Any of the following decisions: withdrawal of Invitation to Tender whom to invite to submit a Quotation or Tender Short listing award of contract any decision to terminate a contract.
<b>Corporate Contract</b>	A contract recorded by the <u>Procurement Officer</u> to support the Council's aim of achieving <u>Value for Money</u> .

## SECTION 6: OTHER RELEVANT CONSIDERATIONS

<b>Contract Finder</b>	A web-based portal provided for the purpose of under- <i>EU Threshold Contracts</i> on behalf of the Cabinet Office
<b>EU Procedure</b>	The procedure required by the EU where the <u>Total Value</u> exceeds the <u>EU Threshold</u> .
<b>EU Threshold</b>	The contract value at which the EU public procurement directives apply.
<b>European Economic Area</b>	The 28 members of the European Union, and Norway, Iceland and Liechtenstein
<b>Financial Procedure Rules</b>	The Financial Procedure Rules outlining <u>Officer</u> responsibilities for financial matters issued by the <u>Section 151 Officer</u> in accordance with the <u>Constitution</u> (Financial Procedure Rules).
<b>Framework Agreement</b>	An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
<b>Government Procurement Agreement</b>	The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the <u>European Economic Area</u> are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore
<b>High Profile</b>	A high-profile purchase is one that could have an impact on functions integral to Council service delivery should it fail or go wrong.
<b>High Risk</b>	A high-risk purchase is one which presents the potential for substantial exposure on the Council's part should it fail or go wrong.
<b>High Value</b>	A high-value purchase is where the value exceeds the <u>EU Threshold</u> values
<b>Invitation to Tender (ITT)</b>	Invitation to tender documents in the form required by these contract procedure rules.
<b>Monitoring Officer</b>	As identified in the <u>Constitution</u>
<b>Nominated Suppliers and Sub-Contractors</b>	Those persons specified in a main contract for the discharge of any part of that contract

## SECTION 6: OTHER RELEVANT CONSIDERATIONS

<p>Non-commercial Considerations</p>	<p>(a) The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ('workforce matters').</p> <p>(b) Whether the terms on which contractors 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.</p> <p>(c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy.</p> <p>(d) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons ('industrial disputes').</p> <p>(e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of,</p>
	<p>contractors.</p> <p>(f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees.</p> <p>(g) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support.</p> <p>(h) Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959. Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be non-commercial considerations to the extent necessary or expedient to comply with Best <u>Value</u>; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 1981 (<u>TUPE</u>) may apply.</p>
<p><b>Officer</b></p>	<p>The officer designated by the <u>Head of Service</u> to deal with the contract in question.</p>
<p><b>Parent Company Guarantee</b></p>	<p>A contract which binds the parent of a subsidiary company as follows: if the subsidiary company fails to do what it has promised under a contract with the Council, the Council can require the parent company to do so instead.</p>
<p><b>Priority Services</b></p>	<p>Those services required to be tendered as defined in the EU public procurement directives.</p>
<p><b>Procurement Strategy</b></p>	<p>The document setting out the Council's approach to procurement and key priorities for the next few years.</p>
<p><b>Purchasing Guidance</b></p>	<p>The suite of guidance documents, together with a number of standard documents and forms, which supports the implementation of these contract procedure rules. The guidance is available on the Council's intranet.</p>
<p><b>Procurement Officer</b></p>	<p>The Council's central procurement officer charged with providing strategic direction and advice to secure <u>Value for Money</u> in the Council's procurement activities.</p>
<p><b>Operational Manager</b></p>	<p>The officers defined as such in the <u>Constitution</u>.</p>

## SECTION 6: OTHER RELEVANT CONSIDERATIONS

<b>Quotation</b>	A quotation of price and any other relevant matter (without the formal issue of an <u>Invitation to Tender</u> ).
<b>Relevant Contract</b>	Contracts to which these contract procedure rules apply (see Rule 4).
<b>Section151 Officer</b>	The Strategic Manager (Resources) or such other officer as may be designated Section151 Officer by the Council.
<b>Service Manager</b>	The <u>Officer's</u> immediate superior or the <u>Officer</u> designated by the Section 151 Officer to exercise the role reserved to the Service Manager by these contract procedure rules.
<b>Short listing</b>	The process of selecting <u>Candidates</u> who are to be invited to quote or bid or to proceed to final evaluation.
<b>Tender</b>	A <u>Candidate's</u> proposal submitted in response to an <u>Invitation to Tender</u> .
<b>Tender Register</b>	The log kept by Property & Procurement to record details of <u>Tenders</u> (see Rule 13.5).
<b>Total Value</b>	The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal calculated as follows: (a) 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 (b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months (c) where the contract is for an uncertain duration, by multiplying the monthly payment by 48 (d) for feasibility studies, the value of the scheme or contracts which may be awarded as a result (e) for <u>Nominated Suppliers and Sub-contractors</u> , the total value shall be the value of that part of the main contract to be fulfilled by the <u>Nominated Supplier or Sub-contractor</u> .
<b>TUPE Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No.246)</b>	Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the authority is transferred from one organisation (e.g. private contractor, local authority in-house team) to another (e.g. following a contracting out or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of employees are transferred along with the business
<b>Value for Money</b>	Value for money is not the lowest possible price; it combines goods or services that fully meet your needs, with the level of quality required, delivery at the time you need it, and at an appropriate price.