



# Contract Procedure Rules

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# **Section 1 - INTRODUCTION**

## **1.1 Basic Principles:**

These rules explain how all goods, works and services must be procured. All Officers and any third part acting on behalf of the Council must follow these Contract Procedure Rules.

The aims of these Contract Procedure Rules are to;

- 1.1.1 ensure compliance with all legal requirements, including that contracts are awarded fairly and that all potential bidders are treated equally;
- 1.1.2 achieve value for money
- 1.1.3 ensure transparency, openness, non-discrimination and fair competition
- 1.1.4 demonstrate probity, consistency, accountability and integrity
- 1.1.5 support the Council's corporate and departmental aims
- 1.1.6 protect Officers
- 1.1.7 ensure compliance with the Council's Commissioning and Procurement Strategy.

## **1.2 Statute:**

- 1.2.1 The Council is obligated by s.135 of the Local Government Act 1972 to make standing orders to ensure competition and regulate the procurement process.
- 1.2.2 The Council must also comply with various other statutes when purchasing goods, works and services including the Public Contract Regulations 2015 and the Concession Contracts Regulations 2016. The risks of non-compliance are significant as suppliers of goods and services have the right to take action against the Council if contracts are not advertised or awarded on an open and fair basis. The consequences of such action may include awards of damages to the supplier; contracts being deemed invalid even if they have already been entered into and a requirement for a procurement process to be re-run .

## **1.3 Application of these Rules:**

- 1.3.1 These Contract Procedure Rules apply to;
  - the purchase of all goods, services (including consultants) or works;

- the sale of services, goods and assets;
- the supply of Services by the Council
- concessions;
- partnerships;

1.3.2 These Contract Procedure Rules do not apply to:

- Contracts of employment which make an individual a direct employee of the Council
- Agreements regarding the acquisition, disposal or transfer of land
- Contracts made by schools as they are subject to any contract procedure rules adopted by their school
- Grants and external funding arrangements (see Section 13.3 for guidance on these types of arrangement).

1.3.3 **All** Officers are responsible for ensuring that these Contract Procedure Rules are complied with. Section 3 sets out specific responsibilities for different Officers

## **Section 2: DEFINITIONS**

In these Contract Procedure Rules the following definitions apply:

"Acceptance Letter"	means the letter advising a tenderer that his bid has been accepted and that the Council wishes to enter into contractual relations based on the bid submitted by the tenderer
"Centralised Contract Register"	means the Council's Centralised Contracts Register maintained by the Council's Procurement Team
"Chief Officers"	means the Chief Executive, Directors and Heads of Service
"Client Officer"	means an Officer instructing the Procuring Officer to conduct a procurement for goods works or services on their behalf
"Concession Contract"	a Contract where the Council entrusts the provision and the management of services to others, where the provider's payment includes the right to exploit those services e.g. award

	of a contract to operate a café with the right to retain sales income generated
"the Constitution"	means the Council's Constitution
"Contract"	means a binding agreement, written or verbal between two or more parties for performing, or refraining from performing, some specified act(s) in exchange for lawful consideration.
"Contracts Finder"	A Central Government website publishing details of central government and other public sector contract opportunities in England
"Contractor"	Any Person awarded a Contract. This includes any consultant appointed by the Council to advise on any project.
"Contract extension"	means an extension to the duration of the contract, but not including any alteration to the scope of the contract
"Contract Notice"	A notice advertising the Council's intention to let a contract published under the Procurement Regulations on the 'Find A Tender' e-notification service and which is submitted in a prescribed form setting out certain key information about the procurement and the contracting authority.
"Contract Officer"	means either a Chief Officer or other Officer nominated by a Chief Officer to act as its service area Contract Officer
"Contract Opportunity Publication"	is the means by which a Procurement Exercise is advertised, including on Contracts Finder.
"Contract Procedure Rules"	means these Contract Procedure Rules which form part of the Council's Constitution
"Contract Reference"	means a reference number allocated by the Council's Procurement Team to all procurement processes estimated to be of a value of £5,000 or more
"Contract variation"	means an alteration to the scope of the contract, but not the extension of the duration of the contract.
"Estimated Value"	means the estimated value of the contract over the whole intended period of the contract to be let (included any



	anticipated extension periods).
“Find A Tender” the e-notification service, being the Cabinet Office’s web based portal, where Contract Notices and Contract Award Notices must be submitted and published as required by the Procurement Regulations “Formal Tender Process”	is a process following the requirements of Open Tendering, Restricted Tendering, Standing List, Negotiated Procedure or Competitive Dialogue
“Forward Plan”	as defined in the Constitution.
“Framework Agreement”	is a general term for agreements with pre-tendered and appointed suppliers which set out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement. The framework agreement may, itself, be a contract to which the Procurement Regulations apply.
“General Terms and Conditions”	means a set of standard contractual terms and conditions used by Shropshire Council for the purchase of lower value goods, works and services.
“Internal Audit”	means the Council’s internal auditors.
“Invitation to Tender”	means the document(s) containing the specification, proposed terms and conditions and other appropriate information as issued to Tenderers to solicit Formal Tenders.
“Irregular Tender”	means a Tender that does not fully comply with the instructions given in the Invitation to Tender.
“Key Decision”	as defined in the Constitution
“Legal Services”	means the Council’s legal services team
“Letter(s) of Intent”	means a letter sent to a contractor specifying terms upon which a contractor may commence works on site or purchase materials relating to a contract in advance of the completion of formal

	contract documentation
“Light Touch Regime”	a procurement process for Schedule 3 Services with a financial value that exceeds the Procurement Regulations Threshold for Schedule 3 Services and the main procedural rules of the light touch regime are set out in regulations 74 to 76 of the Public Contracts Regulations 2015
“Low Value Contract”	means a contract valued between £0 - £10,000.00
“Major Contract”	means a contract valued in excess of £170,000.00
“Minor Contract”	means a contract valued between £10,000.00 and £50,000.00
“Official Purchase Order Form”	means the Council’s form of documentation (whether in a hard copy or electronic format) made available for the purpose of placing purchase orders for goods, works or services
“Officer”	means an employee of the Council.
“Ordinary Contract(s)”	means a contract valued between £50,000.00 and £170,000.00
“Person”	includes a partnership, body corporate or unincorporated association.
Performance Bond	means a bond issued to one party of a contract as a guarantee against the failure of the other party to meet the obligations specified in the contract
“Post Tender Negotiations”	means the ability to negotiate with a Tenderer after a Tender has been opened and evaluated in accordance with the published evaluation criteria for the purposes of securing an improvement in the delivery of the contract including but not limited to improvements in price.
“Procurement Checklist”	means the checklist to be completed by the Procuring Officer to ensure compliance with these Contract Procedure Rules
“Procurement Exercise”	means any process by which goods, services and/or works are to be procured including but not limited to Request for Quotations and Formal Tender Processes
“Procurement Regulations”	means the Public Contracts Regulations 2015, the Concession Contracts Regulations 2016 and the Utilities Contracts

	Regulations 2016, or any amending, replacement or re-enacting legislation
"Procurement Regulations Threshold"	means the applicable financial thresholds for supplies, services, works or Schedule 3 Services or Concession Contracts, over which contracts are subject to the relevant procurement regime set out in the Procurement Regulations.
"Procuring Officer"	means any Officer, acting under the delegated powers of a Chief Officer, who is responsible for the procurement of goods and services.
"Procurement Manager"	means the Procurement Manager of the Council's Procurement Team
"relevant or appropriate Chief Officer"	means the Chief Officer responsible for the function to which the contract relates except that, where another Chief Officer is responsible for the letting of the contract, it shall mean that Chief Officer in consultation with the Chief Officer on whose behalf the contract is to be let.
"Quote/Quotation"	is an offer to sell works, goods and/or services at a stated price under specified conditions. A Quote or Quotation may or may not be written.
"S.151 Officer"	means the Council's responsible Chief Finance Officer required to be employed by the Council under section 151 of the Local Government Act 1972
"Schedule 3 Services"	Those services listed in Schedule 3 to the Public Contracts Regulations 2015 which are over the relevant threshold and are not subject to a full procurement regime, but instead may be procured using the Light Touch Regime
"Sign" or "Signature"	Means either: <ul style="list-style-type: none"> <li>• a physical 'wet ink' signature; or</li> <li>• a digital/electronic signature which has been added to a contract via a secure e-signature software platform in use by the Council for the signature of official Council documents.</li> </ul>
"Tender"	means the formal offer from a tenderer, which is capable of acceptance by the Council, which is a response to an Invitation to Tender. It shall include all documents comprising the

	submission including pricing, technical specification and method statements as well as information about the tenderer. A written Quote or Quotation is also a tender.
“Tenderer” or “Tenderers”	means the person or persons invited to participate in a Procurement Exercise.
“Value for Money”	means the duty of the Council to secure the optimum combination of whole-life costs and benefits to meet customer requirement
“WME”	means West Mercia Energy being a local authority purchasing consortium for the supply of utilities of which the Council is a joint member authority.

## Section 3: RESPONSIBILITIES OF OFFICERS

All Officers are responsible for complying with these Contract Procedure Rules. This Section 3 outlines the responsibilities of all Officers as follows:

### 3.1 Responsibilities of Officers

Table 1

<p><b>Assistant Director - Legal and Governance:</b></p> <ul style="list-style-type: none"> <li>- Sign Low Value, Minor, and Ordinary contracts up to £170,000 on behalf of the Council.</li> <li>- Sign Major contracts (over £170,000) on behalf of the Council.</li> <li>- To sign <b>all</b> contracts where the Council is the supplier.</li> <li>- Approve, authorise and sign contract variations (after confirmation from the budget holder that finance is available) which take a contract value over the financial thresholds of a Major contract (excluding contract variations leading to contract values exceeding Procurement Regulations Thresholds)</li> <li>- To grant approval to any amendments to a written contract (other than those specifically permitted within the contract) after the contract is awarded.</li> <li>- Provide guidance and training on contracting arrangements in conjunction with the Procurement Manager.</li> <li>- To keep the Council’s Contract Procedure Rules up to date and under review in conjunction with the Section 151 Officer.</li> <li>- Consider, approve or reject any contracts submitted where the Council is the</li> </ul>
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supplier or provider.

- To approve/grant exemptions from the Contract Procedure Rules (for contracts not subject to the Procurement Regulations).
- Where the Council is conducting a joint procurement exercise with another public body, the power to authorise, where appropriate, the use of the other public body's tender return process. **Provided** that:
  - i) the Assistant Director - Legal and Governance is satisfied that the Procuring Officer has taken all necessary steps to verify that the other contracting public body's tender return process meets the Council's requirements in terms of its security measures and
  - ii) that a secure and transparent process to ensure the integrity of the tender opening process is agreed in writing between the Council and the other contracting public body and that no tenders shall be opened (either hard copies or via an electronic tendering system) by the other contracting public body unless this is agreed and accepted in advance.
- To sign all documents certifying that the Council has the legal power to enter into a contract
- After consultation with the Council's Section 151 Officer, to make changes to these Contract Rules without reference to Cabinet or Council where such changes are imposed by legislation; or are as a consequence of the implementation of policy decisions taken by Council; or are minor corrections; or are minor amendments in light of service delivery changes and/or procedural changes; or are as a consequence of management/staff structural changes

With the assistance of all relevant line managers and Chief Officers as appropriate:

- To consider and recommend action if Service Areas have not followed the requirements of the Contract Procedure Rules

### **Legal Services Managers:**

- To perform the responsibilities of the Assistant Director - Legal and Governance either in that officer's absence or further to a delegation of authority for any such responsibilities made by the Assistant Director - Legal and Governance

### **Internal Audit in conjunction with S.151 Officer**

- To carry out checks on the financial status of suppliers and recommend, on financial grounds, whether potential suppliers are suitable or unsuitable to conduct the proposed contract.
- To approve and agree the type and style of records to be maintained by

each Service Area.

- To conduct audits to assess whether Service Areas have complied with Contract Procedure Rules and produce a biennial report on compliance with Contract Rules to the Audit Committee.
- To investigate and report on suspected fraud, corruption and other breaches of Contract Rules and recommend appropriate action, with the assistance of the relevant Chief Officer.
- In consultation with the Procurement Manager, to periodically review the financial thresholds contained within these Contract Procedure Rules and to report any suggested amendments to Cabinet for approval

### **Chief Financial Officer (Section 151 Officer):**

- To keep the Council's Contract Procedure Rules up to date and under review in conjunction with the Assistant Director - Legal and Governance.
- To grant approval for loans and operating or finance leases.
- For the avoidance of doubt this does not include loans made pursuant to the Chronically Sick and Disabled Persons Act 1970, Deferred Payment Agreements made pursuant to the Care Act 2014 or such other loans to, or for the benefit of, Service Users made in the performance of the Council's statutory functions.

### **Chief Officers:**

- Must identify key strategic procurements (valued in excess of £500,000) and ensure they are properly resourced. Legal, Financial, HR and the Council's Procurement Team input must be sought at the initial stages.
- May sign Low Value Contracts.
- May sign Minor contracts.
- May sign Ordinary contracts on behalf of the Council.
- Power to delegate authority to sign any Low Value, Minor or Ordinary contracts to authorised Officers and Contract Officers (a written record of all delegations to Officers must be retained and a copy supplied to Legal Services)
- To submit to the Assistant Director - Legal and Governance for consideration, approval or rejection any contract where the Council is the supplier/provider

- Prior to the award of any Major Contracts, must obtain a report and advice from the Section 151 officer via Internal Audit with regard to the financial situation of suppliers bidding for major contracts. Where the financial standing is unsatisfactory, approval to proceed must be obtained from the Council's Section 151 Officer.
- In respect of Ordinary and Major Contracts: to ensure that contracts are legal (i.e. within the Council's statutory powers), affordable and that the Council can carry out its duties under them (commissioning)
- to ensure that Procuring Officers receive appropriate training before exercising powers to negotiate/agree contracts
- ensure that discussions/correspondence do not inadvertently commit the Council to contractual relationships with potential suppliers
- to ensure that contracts and tendering processes within their Service Areas follow Contract Procedure Rules and Council Financial Rules
- ensure that their Service Areas have systems in place to avoid fraud and corruption and to inform Internal Audit immediately of any issues or problems arising from fraud or corruption
- Nominate Contract Officers and ensure that details of such officers are passed to the Assistant Director - Legal and Governance
- To obtain approval/grant of an exemption to Contract Procedure Rules from the Assistant Director - Legal and Governance before proceeding to act upon any exemptions required
- Power to authorise and sign contract variations which do not increase a contract value to the extent that it exceeds the financial thresholds of Major Contracts
- Ensure that the Council's Procurement Team are advised of all contracts with a value over £5,000 at the commencement of any procurement process so that:
  - i) a Contract Reference can be provided;
  - ii) contracts over the relevant value can be published on Contracts Finder in accordance with the requirements of the Procurement Regulations and
  - iii) once a contract has been awarded, to enable the Centralised Contract Register to be updated to enable details of **all** contracts to be made available for publication in accordance with Central Government's transparency requirements

### **Procuring Officers:**

- **Must** ensure they understand these Contract Procedure Rules and their obligations under them before commencing a procurement exercise.

- **Must** ensure that all procurement processes undertaken are carried out in accordance with these Contract Rules, Local Government statutory powers and Procurement Regulations in force at the relevant time and that any actions taken are within their level of authorisation in accordance with the Council's Constitution and Financial Rules.
- **Must** ensure that there is a suitable Council, Cabinet or Chief Officer approval for each contract for which they are responsible.
- **Must** ensure that all contracts and the procurement process comply with the Council's Financial Rules.
- **Must** advise the Council's Procurement Team of all contracts with a value over £5,000 at the commencement of any procurement process so that:
  - i) a Contract Reference can be provided;
  - ii) contracts over the relevant value can be published on Contracts Finder in accordance with the requirements of the Procurement Regulations and
  - iii) notify the Procurement Team of the contract award, to enable the publication of relevant awards to be added to Contracts Finder and for the Centralised Contract Register to be updated to enable details of **all** contracts to be made available for publication in accordance with Central Government's transparency requirements
- Should either themselves (or where acting for a Client Officer require the Client Officer to) prepare and document an estimate of the whole life cost of the contract including, where appropriate, any maintenance and on-going costs (such estimate to be retained on the appropriate contract file held within the relevant Service Area) for the purposes of correctly assessing the value of a contract **and** to ensure that there is sufficient budget for the Contract.
- For contracts where there is evident significant risk this should be added to the operational risk register of the relevant service area. For these contracts and **all contracts over £1 million** a documented risk register must be produced and maintained in accordance with the Council's Opportunity Risk Management Strategy. This should be held on the Council's risk management system and should cover the procurement process and the eventual contractual relationship. The risk register should analyse all risks and identify how the risks will be managed together with the responsible Officer.



- Where appropriate, ensure that all key stakeholders have been identified and consulted and their views represented in the risk log, specification and contract documents
- **Must** ensure that discussions/correspondence do not inadvertently commit the Council to contractual relationships
- Subject to the nature and value of the intended contract, where there are any concerns arising, consult the Council's Procurement Team and Legal Services for guidance as early as possible in the procurement process.
- For Ordinary or Major Contracts, Procuring Officers **must** consult with the Council's Procurement Team at the outset of the procurement process for advice and guidance on the processes involved.
- Identify and allow a sufficient timescale for a procurement process to be undertaken prior to the anticipated commencement of a contract.
- **Must** ensure that the Contract Officer for their (or the Client Officer's) Service Area is notified in writing of all Low Value (involving expenditure of £500 and above), Minor, Ordinary and Major procurement exercises undertaken for the purposes of maintaining records of expenditure
- Where an exemption to deviate from these Contract Procedure Rules is considered to be required, Procuring Officers **Must** obtain the approval and grant of any exemption needed from the Assistant Director - Legal and Governance (See Section 3.4 of these Contract Rules for further information on exemptions) only **after** the financial standing of the supplier has been assessed and **before** proceeding with the procurement process. A copy of any exemption granted must be retained on the relevant procurement file.
- (**Subject** to the relevant level of authority held by the Procuring Officer to approve expenditure under the Council's financial systems) the power to sign Low Value, and Minor contracts. Procuring Officers may also sign Ordinary Contracts together with another Officer authorised to sign Ordinary Contracts if he/she has the appropriate authority under the Council's financial systems and delegated authority from the relevant Chief Officer to do so
- **Must** seek approval from the Assistant Director - Legal and Governance for any amendments to a written contract (where the contract value falls within the Major contracts category or where the Council is the supplier under a contract) made after a contract has been awarded (other than those

amendments/variations specifically permitted within the contract).

- **Must** maintain a procurement contract file containing all correspondence relating to the procurement process including **all** tender evaluation documentation. The file must be retained for six years after the completion of the contract.
- **Must** follow the Council's tender evaluation guidance.
- **Must** ensure that no work starts or site access granted before a signed contract with the supplier/contractor is in place.

### **Contract Officers:**

- **Must** maintain a register of contracts for their Service Area to ensure that information on all contracts where there is expenditure over £500 and up to £5,000 be made available for publication in accordance with central Government transparency requirements.
- **Must** ensure that the Council's Procurement Team are advised of all proposed contracts of values above £5,000 at the commencement of any procurement process so that a Contract Reference can be provided.
- Once a contract is awarded, Procuring Officers should ensure that the Council's Procurement Team are advised to enable the Centralised Contract Register to be updated and for details of all such contracts to be made available for publication in accordance with Central Government's Transparency requirements.
- where authority has been delegated by their relevant Chief Officer, may sign Low Value, Minor Contracts and Ordinary Contracts, (Ordinary Contracts to be signed together with another Officer authorised to sign Ordinary Contracts).
- Must comply with the record keeping requirements as identified in these Contract Rules for each Contract value level.
- Must maintain a list of all persons authorised to sign contracts within their Service Area and provide a copy to Legal Services.

### **All Officers must:**

- Understand these Contract Procedure Rules and the processes they must follow when agreeing contracts or ordering goods, work or services.

- Make sure that when competing for a formal in-house bid that they do not take part in the decisions relating to the process, or assess the bids or award the contract.
- Follow the national and local code of conduct for local government employees, a copy of which is included in the Employee Induction Handbook and can be obtained from Human Resources.
- Declare to their Chief Officer (as appropriate) any interest which could influence their judgement in contracting matters. Legal advice must be obtained by Officers where any conflict has potential to impact on contractual relationships.
- Make sure that the Council obtains value for money.
- Follow these Contract Procedure Rules and any codes of practice, guidance or instructions provided by the Assistant Director - Legal and Governance and/or Chief Financial Officer.
- Follow all relevant laws.
- Follow the Council's Financial Rules and to follow the systems and procedures that are in place to control budgets properly.

### **3.2 General Points to Note by all Officers:**

- 3.2.1 Third parties acting on behalf of the Council (e.g. Consultants) must also comply with these Contract Procedure Rules. Officers instructing third parties to procure contracts **must** supply them with a copy of these Rules and ensure that they are followed.
- 3.2.2 Corruption is a criminal offence. All Officers who let, manage or supervise contracts must ensure adequate records are kept and act in accordance with the highest standards of propriety and in accordance with the Council's Employee Code of Conduct (please refer to Part 5 of the Council's Constitution, particularly with regard to relationships between contractors and suppliers and the separation of roles during tendering processes).
- 3.2.3 The Assistant Director - Legal and Governance will be responsible for any interpretation of these Contract Procedure Rules

- 3.2.4 In all instances, procurement shall be undertaken in accordance with the principles of obtaining Value for Money, and in a manner that is non-discriminatory, transparent and fair.
- 3.2.5 The Council is obliged to publish all items of expenditure on goods, services and works which exceed £500 in value. Prior to placing any order, Officers must consider whether the expenditure can be justified. Orders must not be artificially split with the intention of bringing the value of each order either below £500 or to avoid a contract threshold, or order less than is actually required.
- 3.2.6 Contracts for goods, services and works shall be structured, where appropriate and within the legislative framework, to support and promote the policies and corporate priorities of the Council. In particular, where appropriate and subject to procurement law, Procuring Officers, when procuring contracts of values up to £50,000 **must** invite at least one Shropshire based contractor to bid for Council contracts. Invitations to tender should not be framed in such a way as to unnecessarily debar small and medium sized companies, the voluntary sector and social enterprises from bidding. Further details relating to offering tendering opportunities to local contractors and suppliers are set out in Sections 7 and 8 of these Contract Procedure Rules.
- 3.2.7 All goods, services and works must comply with any relevant standards or specifications, British Standard Specifications or Codes of Practice current at the date of the tender together with the Council's own General Terms and Conditions (where applicable).

### **3.3 Consequence of failing to comply with these Contract Rules:**

- 3.3.1 It is an implied condition of employment of all staff of the Council with responsibility for the administration of contracts that they should at all times observe the provisions and the spirit of these Contract Procedure Rules.
- 3.3.2 Failure to comply with any of these Contract Procedure Rules **may result in disciplinary action and legal proceedings against the Officer or third parties concerned**. Any Officer who fails to follow these Contract Procedure Rules may lose the protection of the indemnity given to Officers by the Council and therefore may have **personal liability** for a contract or any losses.
- 3.3.3 Where it becomes apparent that an Officer has failed to comply with these Contract Procedure Rules then their Chief Officer must notify, in the first

instance, the Assistant Director - Legal and Governance. The relevant Chief Officer must compile a report outlining the reasons for the non-compliance and the steps taken to prevent a re-occurrence. The Assistant Director - Legal and Governance in their capacity as the Council's Monitoring Officer shall consider and take action as appropriate.

### **3.4 Exemptions**

**3.4.1 Consent to dis-apply the competitive tendering requirements of these rules will only be approved in exceptional circumstances and only when the Procurement Regulations do not apply**

3.4.2 Standing exemptions apply to:

3.4.2.1 specified accommodation (as defined by the Care Act 2014) sought for an individual with a registered care provider of their choice further to regulations made under the Care Act 2014, or for individual school placements sought for a child with Special Educational Needs or where the assessed needs of an individual (either an adult or a child) require a specific social care package, which is only available from a particular provider in the opinion of the appropriate Chief Officer. In each case the Procuring Officer must ensure that the provider meets the relevant national minimum standards for the provision of such accommodation and care e.g. Care Homes Regulations 2001 and OFSTED.

3.4.2.2 contracts for performers at Theatre Severn (please note that this standing exemption is not to be applied to any other type of contract connected to Theatre Severn e.g. for the appointment of production companies, administrative contracts etc)

3.4.3 Circumstances which *may* justify an exemption are:

3.4.3.1 where goods, services or execution of works are obtainable only from one source or contractor and there is no reasonably satisfactory alternative;

3.4.3.1 where compatibility issues are such that procurement from another source would be uneconomic given the investment in previous infrastructure;

3.4.3.2 where waiving the application of the rules would be in the interests of the efficient management of the service;

- 3.4.3.3 where there is a legal requirement to contract with a particular supplier;
  - 3.4.3.4 in an emergency situation which requires an immediate contract (for example where there is immediate risk to persons or property); please note that in such circumstances, a retrospective exemption **must** be sought;
  - 3.4.3.5 for the procurement of unique items such as works of art, museum specimens, historical documents, performers or theatre acts (not being Theatre Severn acts or performers);
  - 3.4.3.6 where funding for a contract is provided by an external source e.g. grant funding and the conditions attached to the funding state that a particular supplier should be used.
- 3.4.4 Where an exemption to these rules is necessary, a written request must be submitted to the Assistant Director - Legal and Governance setting out the reasons for the request for an exemption. A request for an exemption must include a brief description of the nature and value of the goods/work/service requiring an exemption together with evidence/information to support a case for an exemption to be granted and reasons why it is in the best interests of the Council not to tender in accordance with these Contract Rules. At least 21 days must be allowed for the Assistant Director - Legal and Governance to make a decision and when submitting a request, Officers should allow sufficient time for a tendering process to be conducted in the event that consent is not granted for an exemption. **Please note that the Assistant Director - Legal and Governance cannot grant an exemption where a contract value will exceed the Procurement Regulations Thresholds.**
- 3.4.5 A record of all exemptions granted must be retained on the relevant procurement file(s) and all exemptions will be subject to examination by internal and external audit. The Procuring Officer must also retain a copy of the exemption authorisation on their procurement file.

## **3.5 Procurement Exemptions**

### **Award of Contracts to Controlled Persons (Teckal Exemption):**

- 3.5.1 The Procurement Regulations apply whenever a contracting authority e.g. the Council, seeks offers in relation to the award of certain public contracts. Regulation 12(1) of the Procurement Regulations (informed by European case law which developed an exemption from procurement rules known as the

Teckal Exemption) provides an exemption from the Regulations where the contract is to be awarded to a 'Controlled person' which is an organisation meeting the required criteria so that it is considered to be equivalent to an "in-house" provider (for example, a contract for a shared services arrangement between the Council and a Council owned company or other Council controlled body). The exemption works on the basis that the contract being awarded is not a "public contract" for the purposes of the Procurement Regulations because the contract is considered to be awarded to an "in-house provider". By awarding to an "in-house provider" the Procurement Regulations do not apply with respect to the requirement to seek competitive tenders. The application of the 'Controlled Persons' exemption is subject to strict legal tests as to whether or not a proposed contractor is sufficiently controlled by the Council to truly to be regarded as an "in-house" provider.

- 3.5.2 In any circumstances where consideration may be given to offering a contract to an organisation that might be viewed as an "in-house provider" advice **must** be sought as early as possible from Legal Services.

#### **Inter authority Co-operation:**

- 3.5.3 The Procurement Regulations still apply where one local authority commissions another local authority or public body to deliver services on its behalf. However, under Regulation 12(7) of the Procurement Regulations an exemption may apply between to 'contracting authorities' where the arrangements between them establishes or implements a co-operation between them, with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common and only for considerations relating to the public interest (e.g. not undertaken by the parties for profit). If the public bodies work together to jointly discharge a shared responsibility to deliver a public function, as opposed to one public body acting as the other's 'service provider', such an arrangement may not be deemed to be a public contract regulated by the Procurement Regulations.
- 3.5.4 In any circumstances where consideration is being given to contractual arrangements for the delivery of services by or with other local authorities or public bodies, and the contract to be let is not proposed to be tendered, advice on the application of the Procurement Regulations **must** be sought as early as possible from the Council's Procurement Team or Legal Services.

## **Section 4 – STARTING THE PROCUREMENT**

### **PROCESS**

#### **Introductory Note:**

##### **Summary:**

The Council has created four contract bands based on the value of the goods/works/services being purchased. These are:

- Low Value £0-10,000,
- Minor Contracts £10,000 - £50,000,
- Ordinary Contracts £50,000 - £170,000,
- Major Contracts £170,000 upwards.

Before commencing a procurement activity all of the steps on the pages of these Contract Procedure Rules must be addressed or considered as appropriate. Detailed commentary for each contract band is set out in Sections 7-10. Evidence of completion of each step must be recorded by the Procuring Officer on file for audit purposes.

The requirements of this Section 4 apply to **all** procurement activity. Officers should then refer to the specific Section relevant to the Contract value (refer to guidance set out in Tables 2 and 3, Section 5) as to how to proceed. Depending on the value of the contract to be awarded, the requirements which need to be fulfilled with regard to each stage of a procurement process will vary. The processes are more fully explained in the subsequent Sections of these Contract Procedure Rules as they apply to each financial band of contract to be awarded.

Further advice and support is available from the Council's Procurement Team and Legal Services

There are effectively six stages to the procurement process:



- preparation (pre-contract requirements) which may include Pre-Qualification Questionnaires
- invitation of tenders/quotations
- evaluation of tenders/quotations
- acceptance and award
- finalisation of contract documents
- monitoring of performance

**For every** contract that is to be let, Officers and more particularly Procuring Officers (and where applicable, Client Officers) must ensure that they can, **as a minimum**, comply with the requirements of this Section 4 as follows:

#### **4.1 Establishing a Business case:**

The extent of the business case will depend on the value and associated risk of the procurement activity. The responsibility for preparing the Business Case lies with the Procuring Officer (except where the Procuring Officer is being instructed by a Client Officer, in which case the Client Officer is responsible and must ensure that the Procuring Officer is provided with a copy of the Business Case once it has been approved). Procuring Officers must take the following into consideration when preparing the Business Case;

- 4.1.1 Identification of need
- 4.1.2 What are the planned results/improved outcomes
- 4.1.3 Identify the estimated cost and the budget available
- 4.1.4 an Options appraisal
- 4.1.5 an Assessment of risks and how to manage them
- 4.1.6 the preparation of a specification/brief and timetable
- 4.1.7 Where the planned procurement is estimated to be over £50,000 in value, you **must** contact the Council's Procurement Team for assistance with the preparation of the criteria to assess tenders.

Once the Business Case has been prepared, the Procuring Officer (and where applicable, the Client Officer) should present it to the relevant budget holder/Chief Officer in order to obtain the necessary authority in accordance with section 4.2 below.

## **4.2 Authority:**

- 4.2.1 **Before** beginning a procurement activity and **before** entering into any contract agreement or contractual arrangement Procuring Officers are responsible for ensuring that the appropriate authority given on behalf of the Council is in place. Where a Procuring Officer is acting on behalf of a Client Officer the authority needs to be provided by the Client Officer. The form of the authority will depend on the value, strategic importance, budget implications and risks.
- 4.2.2 Officers must consider whether the decision to procure is a key decision and if so ensure that details are entered onto the Forward Plan (see the Council's Financial Rules for further information on this).
- 4.2.3 The relevant authority must be evidenced in writing. Acceptable forms of authority are;
- minutes of a Council resolution;
  - a decision made properly within the powers of a Cabinet (including any delegations made to individual Cabinet Members), Standing Committees or a Council employee under a statutory scheme as set out in the Constitution; or
  - delegated powers of the Chief Executive or Chief Officers (see Parts 3 and 8 of the Council's Constitution).

## **4.3 Budget:**

- 4.3.1 **Before** beginning a procurement exercise Procuring Officers are responsible for ensuring that there is enough money in the budget to cover the total whole life financial commitment being made. Where a Procuring Officer is conducting a procurement exercise on behalf of a Client Officer, Procuring Officers should obtain this information from the Client Officer.

- 4.3.2 Confirmation of budget, consideration of revenue implications and that all financial approvals have been obtained must be evidenced in writing and kept on the procurement file.

#### **4.4 Insurance:**

- 4.4.1 Procuring Officers are responsible for checking that all chosen contractors/suppliers provide written evidence of holding adequate insurance to cover public liability, employers' liability and if necessary professional indemnity insurance together with any other appropriate insurance required for the full duration of the contract. Procuring Officers must ensure that there are no endorsements on the Public Liability policy that would exclude the services being purchased.
- 4.4.2 Indemnity levels must reflect the risk to the Council which, in the absence of written confirmation from the Council's Risk and Insurance Manager, typically will be for each and every contract;
- At least £5 million for public liability
  - At least £5 million for employers liability
  - At least £2 million for professional indemnity
  - Motor policy for physical injuries – unlimited
  - Motor policy for property damage – at least £5 million
  - Fidelity Guarantee insurance – as appropriate
- 4.4.3 Procuring Officers should have regard to the levels of insurance required relevant to the risks attached to each contract. Where variations to the levels referred to above are required advice must be sought from the Chief Financial Officer. In some cases where the contract is of low risk the levels required may be reduced but only following the written consent of the Council's Risk Management Team

#### **4.5 Staff Transfers - Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) and Pensions:**

4.5.1 **Before** the commencement of a procurement exercise, Procuring Officers **must** consider whether TUPE will apply to Council or the current contractor's staff. Officers **must** consult with the HR, Pensions and Legal Services at an early stage and must ensure that sufficient time is built into the procurement process to deal with staffing issues and ensure that the correct processes are followed.

4.5.2 TUPE will apply where Council services are:

4.5.2.1 Contracted out or "outsourced" to a third party; or

4.5.2.2 Re-let to a new contractor; or

4.5.2.3 Brought back in-house.

4.5.3 Where TUPE applies staff will transfer automatically to the new employer on current terms and conditions. Continuity of service will be preserved.

4.5.6 Whilst the pension rights of current and former public sector staff are not protected by TUPE, there is a requirement to ensure that transferring employees either have access to the Local Government Pension Scheme or a pension scheme which is broadly comparable to the Local Government Pension Scheme.

Advice should be sought from the Council's Pensions team at an early stage where Council staff are likely to TUPE transfer to a new employer as provisions and information regarding the protection of pensions should be included in the information provided to Tenderers.

The provision of pensions to staff transferring out of the Council can have a significant impact on the financial elements of a tender and the Council is obliged to ensure that transferring staff have the required pension arrangements available to them from the new service provider.

4.5.7 Where TUPE applies, the tender and contract documentation **must** include standard provisions dealing with TUPE and pensions as approved by the

Assistant Director - Legal and Governance. The contract must not commence until all TUPE and pensions issues have been resolved to the satisfaction of the Assistant Director - Legal and Governance and the Council's HR team.

#### **4.6 Bonds and Security:**

A Bond is a written form of guarantee from a third party guarantor (usually a bank or an insurance company) submitted to a principal (being the Council for the purposes of these Rules) by a contractor at the commencement of a contract. The guarantee provided under a bond provides a degree of protection to the Council against the failure of a contractor to meet its obligations specified in the contract e.g. non-performance and/or in the event that the contractor goes into liquidation/bankruptcy. Under the terms of a bond the Council would have surety to the effect that it is guaranteed an amount of compensation for any monetary loss suffered by it as a consequence of the failures of the contractor. The amount of the surety provided would be to the amount specified in the performance bond (usually 10% of the contract value). The guarantee provided under the bond should (where a contractor defaults) be sufficient to enable the Council to re-let the contract or, if applicable, to appoint a replacement contractor to complete any outstanding works under the contract.

4.6.1 **When** commencing a procurement exercise, Procuring Officers are responsible for identifying the need for a bond or relevant security and, for ensuring that it is a requirement of the tender process and for taking finance and legal advice on the form and steps for completion. The obligation of the Procuring Officer to consider the requirement for a bond or other form of security shall remain throughout the procurement process and such need should be kept under review.

4.6.2 A performance bond or adequate security will be required where:

- 4.6.2.1 the nature and length of the contract is such that the risk of failure is sufficiently high; or
- 4.6.2. the estimated cost of re-establishing a service if the contract fails is relatively high; or

4.6.2.3 the financial and technical standing of the contractor is such that the risk of the failure is sufficiently high (if this is considered a risk, the requirement for collateral warranties should also be considered).

4.6.3 The amount of the bond will usually be at least 10% of the total contract value unless otherwise agreed by the Section 151 Officer

4.6.4 Where the contractor is a limited company which is part of a larger group, the ultimate holding company or associate company, with adequate assets, may be required to provide a indemnity/guarantee in addition to or instead of a performance bond or other security.

4.6.5 For all major contracts, a performance bond, cash deposit or parent company guarantee must be considered and sought when appropriate.

4.6.6 A decision not to enter into a bond, or take a deposit or guarantee must be based on a financial/business risk assessment in consultation with the Service Area Finance Officer. The decision not to have a bond or guarantee must be recorded in writing by the Procuring Officer stating why, and placed on the procurement file. For contracts over £1million, the case for not having a bond must be presented to and authorised by the Director of Finance, Governance and Assurance, recorded in writing and placed on the Procurement file.

4.6.7 Where a bond is required, this must be secured before work starts or site access granted.

#### 4.6.8 **Collateral Warranties:**

Consideration should be given at the outset of procurement to the need for acquiring assignable Collateral Warranties with regard to contracts (usually construction contracts). It is generally the case that only the parties to a contract can sue to enforce the rights and obligations under it. The purpose of a Collateral Warranty Agreement is to provide a direct legal link which might not otherwise exist between the Council and third party contractors used by a main contractor to complete a project e.g. consultants, architects or other sub-contractors.

A Collateral Warranty can provide some protection against the insolvency or negligence of the various parties involved in a contractual chain by enabling the Council to make a claim against a third party who may be at fault. For example, if a main contractor, with whom the Council has a direct contract, then sub-contracts construction or design work and the main contractor subsequently goes into liquidation, the Council (where Collateral Warranties are in place) would be in a position to ensure that any sub-contractors employed by the main contractor have complied and/or will comply with any obligations they may have under the terms of their appointment, building contract or sub-contract. Without such Collateral Warranties, the Council would not be in a position to enforce such obligations as it would not have been a party to the contracts with the third party contractors concerned.

It is difficult and potentially expensive to acquire Collateral Warranties after a project has been completed and so thought should be given to acquiring such Warranties at the outset to avoid any complications at a later date. It is particularly important to consider obtaining Collateral Warranties where the project is being funded by a third party (you will need to check requirements of any funding agreement in place), or, where it is likely that the Council will dispose of a construction project to a third party who may as a condition of purchase, require the benefit of Collateral Warranties to be assigned to them.

## **4.7 Environmental Sustainability**

- 4.7.1 **Before** commencing a procurement exercise and in accordance with the Council's Procurement Strategy, Procuring Officers should consider how to incorporate the principles of sustainability into each procurement and consider how social, equality, ethical, environmental and economic factors are taken into account.
- 4.7.2 Officers must comply with the Council's Procurement Strategy and any other policies and guidance on sustainability issues.
- 4.7.3 The Council's Procurement Team can offer support in this area

## **4.8 Social Value**

Under The Public Services (Social Enterprise and Social Value) Act 2012, the Council is under an obligation to consider, when procuring, how the proposed procurement might improve the economic, social and environmental well-being of its area. **Before** commencing a procurement exercise, Procuring Officers should ensure that these considerations are taken into account and tailor the process accordingly so that the social value of a procurement may be incorporated into the terms of a contract as appropriate. Where the Council fails to comply with its obligations, it may be subject to a challenge by way of Judicial Review, therefore the Procuring Officer should ensure that considerations under the Act are documented to demonstrate compliance and ensure the Council has evidence of an audit trail in case of challenge.

In respect of framework arrangements, obligations under the Public Services (Social Enterprise and Social Value) Act 2012 should be considered as part of establishing the framework and **not** at the time of the individual contract award/ call-off agreements.

When utilising framework arrangements established by third parties, the Procuring Officer should check and obtain evidence that the third party has met the obligations of the Act when setting the framework up.

## **4.9 Equality and Diversity:**

4.9.1 Under the Equality Act 2010, as a public authority the Council has a specific obligation known as the public sector equality duty (PSED). When carrying out public functions, the PSED **requires** public authorities to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not (i.e. by removing or minimising disadvantages suffered by people due to their protected characteristic, or meeting the needs of those with a protected characteristic, and encouraging their participation in public life or activities where participation is low)



- Foster good relations between people who share a protected characteristic and those who do not.

The Act identifies 'protected characteristics' as age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, pregnancy and maternity and marriage and civil partnerships

- 4.9.2 To have 'due regard' means that when making decisions (and in its other day-to-day activities), including planning and making decisions about procurement, the Council must consciously consider the need to: eliminate discrimination, advance equality of opportunity, and foster good relations. How much regard should be had to the obligation will depend on the circumstances and the relevance of the aims of the PSED to the decision or public function in question e.g. decisions about the provision of social care for older people will have greater potential impact and more relevance to the PSED in comparison to those regarding the purchase of stationery, and so will need a higher degree of regard.
- 4.9.3 It is good practice to keep an accurate record that the PSED has been considered. The Council is subject to challenge by way of Judicial Review if it fails, or appears to fail, to meet the PSED and it is harder to demonstrate that the PSED has been considered if no records are kept. The Officer or Council committee (e.g. Cabinet) making the decision should also have sight of any information relating to the consideration of equality issues so that any decision is informed in respect of the PSED where relevant and appropriate. A recognised method of conducting an equality impact analysis and assessment is to complete an Equality Impact Needs Assessment form ("EINA"), and template documents and guidance on the Council's use of EINA's is available on the Council's Intranet. The PSED is an on-going obligation and therefore should be considered during pre-procurement, the procurement itself and through contract management.
- 4.9.4 The PSED cannot be delegated to third parties – the duty always remains with the Council even if the Council has sub-contracted or contracted out the performance of the function. Where relevant, Contractors should be required

(by way of inclusion of specific contract terms) to take steps to assist the Council to comply with the continuing duty under the PSED.

- 4.9.5 All contractors will be expected to comply with national equality legislation to deliver services fairly and without unlawful discrimination
- 4.9.6 The Council's Procurement Team can provide advice on the necessary questions that are required to be raised with all contractors within the tender documents and how the responses should be evaluated.
- 4.9.7 Further information can be found on the Council's Procurement pages on the intranet and on the Equalities and Human Rights Commission website, where they have produced a guide for public authorities on equality considerations in procurement.

#### **4.10 Corruption – Cancellation Rights**

- 4.10.1 Wherever possible every contract agreement must state that the Council can cancel the contract and recover any resulting losses if a contractor/supplier or their employees or agents with or without their knowledge:
  - 4.10.1.1 does anything improper to influence the Council to award the contract. (In this respect the attention of employees of the Council is drawn to the National Code of Local Government Conduct which must be observed);
  - 4.10.1.2 appears to commit an offence under the Bribery Act 2010 or Section 117(2) Local Government Act 1972 (as amended).

#### **4.11 Contracts Funded By Grants or Other Third Party Funding**

- 4.11.1 Contracts funded by grants or other third party funding are not exempt from these Contract Procedure Rules and Procuring Officers must demonstrate competition and best value and full compliance with these Contract Procedure Rules and any specific procurement requirements of the grant funding agreement. An exemption from Contract Rules may be sought from the Assistant Director - Legal and Governance on the basis of the funding bodies own terms and conditions of grant.

4.11.2 Procuring Officers must ensure that care is taken in drafting contract terms to ensure compliance with any grant conditions, and advice should be sought from Legal Services at an early stage.

4.11.3 Procuring Officers should also ensure that the funder has committed by way of **written agreement** to make funds available for the whole contract term prior to entering any contractual commitments with third parties. To enter into any procurement contract which is wholly or partially funded by third parties without their written confirmation of their commitment to provide their external funding is a disciplinary offence.

#### **4.12 Value for Money**

Procuring Officers should bear in mind the need to secure Value for Money at all times. Where a contract is not subject to the competitive process there is still a need to demonstrate that Value for Money has been achieved.

Therefore, where it is appropriate having regard to the nature of the service, a tender process should be undertaken in order to demonstrate Value for Money. Where it is not considered appropriate to tender the service (and this approach has been authorised by the appropriate Chief Officer) then the reasoning for this should be recorded on the Procurement file together with alternative evidence as to how Value for Money is being achieved.

#### **4.13 Council's Procurement Team**

The Council's Procurement Team can provide invaluable advice and support at all stages of the procurement process regardless of value. They must be contacted at this initial stage if a procurement activity is over £50,000 in value.

#### **4.14 Legal Services**

Legal Services can provide legal advice on high-value or complex procurements. Procuring Officers are responsible for ensuring that Legal Services are involved in all above Procurement Regulations Threshold contracts and any contracts involving legal

issues for example TUPE or the provision of aid to an organisation further to Subsidy Control rules (see Section 11 below). Legal Services can also provide legal advice on specialist social care, education and housing related contracts.

#### **4.15 Procurement Checklist**

A Procurement Checklist is available on the Council's Corporate section of the web pages following these Contract Procedure Rules. The checklist is intended to assist a procurement process and Procuring Officers must ensure that a Procurement Checklist is completed and stored on each procurement file. All Procuring Officers should satisfy themselves that they can complete each stage of the Procurement Checklist before proceeding with a procurement exercise. If there is any part of the pre-procurement requirements that are not met then a Procuring Officer **must not** proceed with the procurement exercise without first consulting the Council's Procurement Team and/or Legal Services for further guidance and satisfactory resolution of the issue in line with these Contract Procedure Rules requirements.

#### **4.16 VAT and Contract Values:**

For the avoidance of doubt, Contract Value bands are exclusive of VAT.

#### **4.17 Use of electronic or digital signatures:**

Where a contract is to be executed 'under hand' (i.e. signed) by the Council then arrangements may be made for the use of an electronic or digital signature to be applied instead of a physical 'wet ink' signature.

In order for a contract to be executed by the Council electronically in accordance with these Contract Rules the contract **must**:

- be signed via the secure e-signature software platform approved and in use by the Council for the signature of official Council documents (e.g. Adobe Sign); and
- be signed by the appropriate number of authorised signatories as required for the value of the contract, as set out in these Rules.

For the avoidance of doubt, Officers are not permitted to electronically “sign” a contract by typing an name into the electronic document or by the application of a ‘cut and paste’ image of a signature into an electronic document or in any other way purport to sign such a document, unless it is done via the secure electronic signature platform. This is to ensure the integrity, security and transparency of the signature process.

Where a document is expressed to be executed as a Deed, execution shall continue to take place by use of the Council’s seal (whether affixed physically or electronically), and not via signature of an officer(s).

## **Section 5: PROCUREMENT ARRANGEMENTS**

### **5.1 Estimating the Value of a Contract:**

- 5.1.1 **Before** commencing a procurement exercise, Procuring Officers are responsible for accurately identifying the Estimated Value of their procurement
- 5.1.2 The value must be ‘aggregated’. This means calculating the value for the whole term of the arrangement including potential extensions or variations e.g. a contract for three years with a yearly value of £30,000 has a total value of £90,000.00. A contract for three years with a yearly value of £30,000 which includes a power to extend the contract for an additional two years i.e. with a potential duration of five years should be valued on the basis of 5 x £30,000 thus the Estimated Value will be £150,000.
- 5.1.3 Accurate valuation is vital to ensure that the correct procurement process is followed and to ensure that there is sufficient budget available to cover the whole period of the contract.
- 5.1.4 Officers must assess the total Council spend on the services, goods or works for the whole period.
- 5.1.5 All estimates must exclude Value Added Tax (VAT) but must include all other taxes and duties that may be payable

### **5.2 Identification of the relevant procurement process**

5.2.1 Based on the Estimated Value, Tables 2 and 3 below provide a quick guide to the minimum requirements for the relevant procurement process :

Table 2

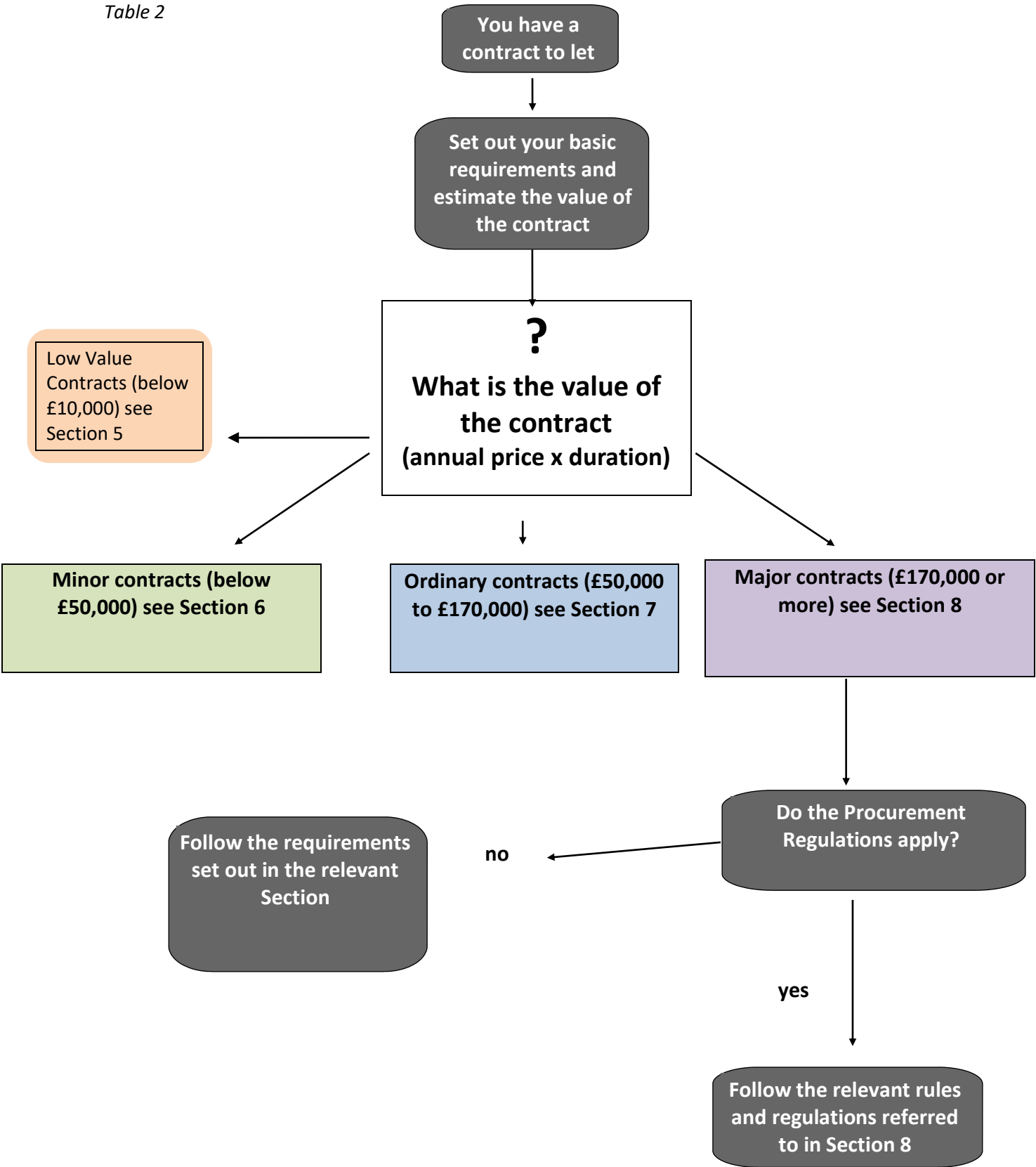


Table 3

<b>Value</b> → ↓	<b>Low Value: £0 - £10,000</b> <b>Procuring Officers must comply with the procedures set out in SECTION 7 of these Contract Procedure Rules</b>
<b>Process</b>	Obtain at least Two verbal/or written quotes where practical and retain a written record of details of verbal quotes and retain on file. (If two quotations cannot be obtained a record of the reasons for this must be maintained)
<b>Contact for advice</b>	Service Area Contract Officers
<b>Minimum Contract Publication Requirements</b>	The Council's Procurement Team should be instructed to place a notice on the procurement pages of the Council's website seeking requests for quotations wherever possible or applicable (such notices to include requests for quotations from local suppliers)

<b>Value</b> → ↓	<b>Minor Contracts: £10,000 to £50,000</b> <b>Procuring Officers must comply with the procedures set out in SECTION 8 of these Contract Procedure Rules</b>
<b>Process</b>	Obtain at least three written quotes and retain request for quotations and copies of quotations received on file
<b>Contact for advice</b>	Service Area Contract Officers or Council's Procurement Team
<b>Minimum Contract Publication Requirements</b>	The Council's Procurement Team should be instructed to place a notice on the procurement pages of the Council's website (and Contracts Finder where appropriate) seeking requests for quotations (such notices to include requests for quotations from local suppliers)

<b>Value</b> → ↓	<b>Ordinary Contracts: £50,000.00 to £170,000</b> <b>Procuring Officers must comply with the procedures set out in SECTION 9 of these Contract Procedure Rules</b>
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<b>Process</b>	<p>A Formal Tender Process should be followed using the “Open Tendering” procedure.</p> <p>Formal Tender and sealed bids (may be submitted via an electronic tendering system see Section 9.8) to be retained in accordance with the processes outlined in section 9.19.4</p>
<b>Contact for advice</b>	Council’s Procurement Team
<b>Minimum Contract Publication Requirements</b>	Procuring Officers <b>must</b> instruct the Council’s Procurement Team to place a notice on the procurement pages of the Council’s website, Contracts Finder and any other website or publication approved by the Council’s Procurement Team for the purpose of notifying the supply market and inviting tenders (including invitations to local suppliers)

<b>Value</b> → ↓	<b>Major Contracts: £170,000 and above</b> <b>Procuring Officers must comply with the procedures set out in SECTION 10 of these Contract Procedure Rules</b>
<b>Process</b>	<p>1) Formal Tender process (for contracts of values between £170,000 and Procurement Regulations Thresholds (see Section 5.2.6) – see process for Ordinary Contracts above; and</p> <p>2) in accordance with the Procurement Regulations (for contracts of values above Procurement Regulations Thresholds)</p>
<b>Contact for advice</b>	Council’s Procurement Team
<b>Minimum Contract Publication Requirements</b>	<p>1) Procuring Officers <b>must</b> instruct the Council’s Procurement Team to place a notice on the procurement pages of the Council’s website, Contracts Finder and any other website or publication approved by the Council’s Procurement Team for the purpose of notifying the supply market and inviting tenders (including invitations to local suppliers); and</p> <p>2) For any contract above Procurement Regulations Thresholds <b>MUST</b> instruct the Council’s Procurement Team to make the arrangements for the publication of the appropriate Contract Notice</p>



	on Find a Tender
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5.2.2 Under Procurement law, procurement of goods, services and works contracts in the public sector and above certain values must be let in accordance with the Public Contracts Regulations 2015. Contracts which are Concession Contracts are subject to separate thresholds under the Concession Contracts Regulations 2016.

5.2.3 Current Procurement Regulations Thresholds are set out on the Council's Procurement Team's intranet site. When assessing the value of a procurement, Officers must look at the total value for the whole life of the contract.

5.2.4 The Council's Procurement Team and/or Legal Services can provide advice on the application of the Procurement Regulations.

5.2.5 Under the Public Contracts Regulations 2015 certain services (see Section 10.1.3) as listed in Schedule 3 of the Regulations are subject to the Light Touch Regime, setting a more flexible procurement process. The Council's Procurement Team (in consultation with Legal Services as appropriate) must approve Schedule 3 procurements under the Public Contracts Regulations 2015.

5.2.6 With effect from 1<sup>st</sup> January 2022, the published Procurement Regulations Thresholds are stated as being inclusive of VAT. **For the purposes of calculating contract values for these Contract Rules, the threshold values net of VAT (at the current standard rate of 20%) should be used and are shown below:**

Public Contracts Regulations 2015			
Type of Contract	Supplies and Services	Schedule 3 Services	Works
<b>Threshold (exc. VAT)</b>	<b>£170,781.60</b>	<b>£530,832</b>	<b>£4,269,549.60</b>
<i>Published Threshold (inc. VAT)</i>	<i>£213,477</i>	<i>£663,540</i>	<i>£5,336,937</i>

Concession Contracts Regulations 2016
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<b>Threshold for a concession contract (exc. VAT)</b>	<b>£4,269,549.60</b>
<i>Published threshold for a concession contract (inc. VAT)</i>	<i>£5,336,937</i>

<b>Utilities Contracts Regulations 2016</b>		
<b>Type of Contract</b>	<b>Supplies and Services</b>	<b>Works</b>
<b>Threshold (exc. VAT)</b>	<b>£341,564</b>	<b>£4,269,549.60</b>
<i>Published Threshold (inc. VAT)</i>	<i>£426,955</i>	<i>£5,336,937</i>

**\* Please note that these Procurement Regulations Threshold values are reviewed every two years. If in doubt as to the current Procurement Regulations Threshold level, please contact the Council's Procurement Team or Legal Services for advice.**

### **5.3 Corporate Contracts**

- 5.3.1 Officers must always check if there is an existing Council contract in place before starting a new procurement activity.
- 5.3.2 If a Council contract exists it must be used unless the contract allows for, and Council's Procurement Team authorise, another course of action. Legal advice must be sought on contract terms that attempt to bind the Council exclusively to a contractor or supplier for the supply of goods and services.
- 5.3.3 Details of Council contracts can be obtained from the Council's Procurement Team intranet pages.

### **5.4 Joint Procurement/Partnerships/ Collaborative Arrangements:**

- 5.4.1 Officers should always consider working in collaboration with others either internally or externally.
- 5.4.2 Where there may be benefits to a joint procurement with other service areas, external organisations or public bodies to achieve economies of scale and prevent duplication, the Council's Procurement Team and Legal Services must be contacted for advice.
- 5.4.3 A joint venture or partnership includes any arrangement involving one or more organisations in addition to the Council through which either a specific project

or services within any of the functions of the Council are to be provided and provides a role for the Council or any of its members or officers in whatever structure is used to deliver the project or services involved (such structures may include, but are not limited to, companies, trusts and management committees).

- 5.4.4 **Before** any consideration is given to the Council entering into a joint venture with the private sector or a strategic service delivery partnership with any external organisation and in particular before any detailed negotiations are entered into or before any contract is made or undertaking given by or on behalf of the Council in relation to a joint venture or partnership, the Officer proposing the joint procurement must submit detailed information concerning the proposed joint venture or partnership to the relevant Chief Officer/Cabinet (as appropriate).

**Collaborative Arrangements:**

- 5.4.5 In order to secure value for money, the Council may enter into collaborative procurement arrangements. Procuring Officers must consult with the Council's Procurement Team when a purchase is to be made using collaborative procurement arrangements with another local authority, Government department, statutory undertaker or public service purchasing consortium.
- 5.4.6 The Council is a member of West Mercia Energy (WME). WME is managed through a Joint Committee of Members and where purchases are made from or through WME, these Contract Procedure Rules apply as follows:

Arrangements for the supply of utilities supplied through WME accord with the Procurement Regulations and WME's own procedures as agreed by the Joint Committee. Prices charged are fully inclusive and surpluses generated are distributed to the owning member authorities.

**Utilities purchased through WME will be deemed to meet the requirements of the Council's Contract Procedure Rules.**

- 5.4.7 Purchases made via a public sector purchasing and distributing consortium (and being under the Procurement Regulations Thresholds) are deemed to comply with these Contract Procedure Rules and no exemption will be required., subject to confirmation by the Procurement Team that the Council is permitted use such consortiums.
- 5.4.8 Any contracts entered into through collaboration with other local authorities or 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 exemption is required. If in doubt, advice must be sought from the Council's Procurement Team.

## **5.5 Frameworks:**

- 5.5.1 A framework contract is an agreement with suppliers, which establishes the terms governing contracts from which orders for goods, services or works may be placed or 'called off'.
- 5.5.2 Frameworks may be set up by the Council, or can be 'hosted' by other councils, consortiums or public buying organisations and which the Council is able to use.
- 5.5.3 Frameworks may only be used when;
- the works, goods or services required are clearly identified within the framework and
  - the framework allows the Council to participate and
  - the framework adheres to the aims of these rules, and
  - they provide overall value for money for the Council
- 5.5.4 Procuring Officers may only purchase from Framework Agreements with the guidance of the Council's Procurement Team.
- 5.5.5 Procuring Officers must ensure that they follow the rules in the Framework which set out how individual contracts can be called off. Often this will involve a further procurement activity, referred to as a mini competition. Advice must be sought from the Council's Procurement Team.

- 5.5.6 Orders or 'call offs' from an existing framework will require the usual authority in compliance with Section 4.2.
- 5.5.7 Framework Agreements must not exceed 4 years duration
- 5.5.8 Call-offs from a Framework Agreement must not contain substantial amendments to the original terms of the Framework Agreement. Terms may only be refined or supplemented.
- 5.5.9 Orders or call offs placed under a Framework Agreement must not exceed the maximum allowable single order value as stipulated in the scope of the arrangement.

## **5.6 Approved Supplier Lists**

- 5.6.1 Approved supplier lists can be useful in some areas of the Council's activities. They can be an efficient way of identifying suppliers. **They cannot be used for contracts governed by the Procurement Regulations as these contracts must be advertised unless the Approved Supplier list has been drawn up in compliance with Procurement Regulations.** If an approved supplier list exists and it is appropriate to use it, then the list must be used
- 5.6.2 Where it is appropriate to use an approved supplier list to choose which suppliers to invite to tender, Procuring Officers will need a system for selecting suppliers from the list. The system must make sure that all those suppliers on the list who are invited to tender have the same opportunity over time to tender for work.
- 5.6.3 Advice should be sought from the Council's Procurement Team with respect to how an Approved Supplier List may be set up.
- 5.6.4 Approved Supplier Lists should be reviewed every **two years** to assess whether a supplier should remain on or be added to the list. Where there are grounds such as poor performance, disputes or poor financial standing, suppliers should be deleted from the Approved Supplier List. Consideration should be given at this stage as to whether there are any new suppliers to add to the list as replacements. Any additional suppliers must go through the same vetting and approval process applied to the initial applicants.

- 5.6.5 All contracts which are let through the Approved Supplier List must comply with these Contract Procedure Rules, in particular when seeking competitive bids and maintaining records.
- 5.6.6 Chief Officers should advise the Assistant Director - Legal and Governance in writing and give adequate explanation for the exclusion of any supplier from an approved list.

## **5.7 Appointment of Consultants**

- 5.7.1 External consultants or advisors providing professional or consulting services may only be appointed if such services are not available within the Council or if Council Officers providing them do not have the resources to meet the needs of the Service in accordance with any existing Council policy.
- 5.7.2 The procurement of consultants or advisors must meet the following requirements:
- 5.7.2.1 written approval must be given by the relevant Chief Officer
  - 5.7.2.2 there must be a detailed written specification or project brief for the work to be undertaken detailing the work to be carried out and, where appropriate, the deliverables required including enough detail to allow the Council to control the quality, cost and time targets to enable the assessment of performance;
  - 5.7.2.3 there must be an agreed time period over which the work will be undertaken and any intermediate milestones; and
  - 5.7.2.4 there must be a full and comprehensive estimate of the cost of the services to be provided
  - 5.7.2.5 be in accordance with any policy or protocol adopted by the Council for the use of consultants

and it shall be included as a requirement of any contract entered into with any person or firm providing consultancy or advisory services that they shall be bound by these Contract Procedure Rules in conducting any procurement process. A copy of these Contract Procedure Rules **must** be provided to them to ensure compliance with these Rules.

- 5.7.3 Consultants, by their nature should not ordinarily be engaged to cover vacant posts but should be taken on by the Council to do a specific piece of work. Occasionally, however, it may be necessary to engage workers to cover vacant posts or sickness absences. In these circumstances, the worker may be 'agency' or 'casual' staff and shall be arranged in accordance with the Council's policies and procedures on the use of agency and casual workers and via any corporate contract in place for the provision of temporary staff.
- 5.7.4 If a consultant or advisor is not employed through the Council's contractual provider of temporary staff, procurement of such consultants and advisors must be in accordance with these Contract Procedure Rules.
- 5.7.5 **Please note that where people are engaged to work outside of the Council's payroll process or the Council's contracted provider of temporary staff, care must be taken to ensure that HMRC rules are complied with in terms of tax and national insurance (Please refer to the Chief Financial Officer for guidance).** Consultants and advisors must be asked to complete the 'Employment Status Checklist' annexed to Guidance Note 1 of these Contract Procedure Rules and Officers involved in the appointment of Consultants and advisors should read the guidance notes annexed to these Contract Procedure Rules as Guidance Note 1
- 5.7.6 All contracts for external consultants and advisors shall explicitly require that the consultants or advisors provide without delay any or all documents and records maintained by them relating to the services provided on request of the Council and lodge all such documents and records with the Council at the end of the contract.
- 5.7.7 Officers involved in engaging any consultant or advisor to work for the Council shall ensure that the consultant or advisor has appropriate indemnity insurance
- 5.7.8 In order to monitor the Council's use of consultants, all Officers who engage consultants or advisors must record the contract on their own Service Area contract register or Centralised Contract Register as appropriate including performance monitoring information and an evaluation of outcomes following project completion.

- 5.7.9 Where the engagement of a consultant is required to support a procurement process or related project, consideration should be given to the consultant or advisor signing a confidentiality agreement and being bound by the confidentiality requirements of the Local Government Act 1972, as amended unless the terms of their contract agreement with the Council already binds them in this regard
- 5.7.10 **An exception to this Rule:** Where the Assistant Director - Legal and Governance considers it appropriate to take external legal advice or to engage Counsel or a private practice lawyer in any matter, then this will qualify as an exemption to these Contract Procedure Rules

## **Section 6 CONDUCTING PROCUREMENT**

### **6.1 General Principles**

- 6.1.1 Every contract or Official Purchase Order for works, goods or services made by the Council shall be for the purpose of implementing the Council's policies and must be made in accordance with the Council's duty of Value for money, Social Values, Sustainability, Procurement Strategy and transparency.
- 6.1.2 All invitations to tender (for contract values up to £170,000.00) shall be issued on an "Open Tender", one stage process. The use of the Restricted Process should be avoided unless there are good reasons for doing so and approval has been sought from the Procurement Team
- 6.1.3 The procurement process undertaken shall be in accordance with the process outlined in Section 5, Table 2 above. Officers should follow the procedures for the applicable level of procurement based on the Estimated Value of the contract in accordance with the following Sections:

**Section 7 – Procedures to be followed for Low Value contracts;**

**Section 8 – Procedures to be followed for Minor Contracts;**

**Section 9 – Procedures to be followed for Ordinary Contracts;**

**Section 10 – Procedures to be followed for Major Contracts (including above Procurement Regulations Threshold contracts).**



## 6.2 GUIDANCE FOR PROCEDURES TO BE FOLLOWED FOR EACH CONTRACT VALUE BAND

**Quick Guide:** *Table 4*

<b>Value of Contract</b> ➡	<p><b>Low Value:</b> <b>£10,000 or under</b></p> <p>↓</p>
<b>Type of Agreement to be used to evidence contract terms</b>	<p>1) Council's Official Purchase Order form incorporating the Council's General Terms and Conditions together with any specific terms required for the goods, works services purchased.</p> <p>Or,</p> <p>2) Acceptance letter incorporating the Council's General Terms and Conditions together with any specific terms required for the goods, works services purchased.</p> <p><b>Note:</b> In cases where the contract value is low but risk is significant, Procuring Officers should consider a bespoke agreement and refer to Legal Services for advice as to the terms to be included.</p>
<b>Where to obtain form of Agreement/Contract</b>	<p>1) Official Purchase Orders are available via the Council's ERP system.</p> <p>2) The Council's General Terms and Conditions are available from the Council's Procurement Team's web pages.</p> <p>3) For bespoke agreements, please refer to Legal Services for advice.</p>
<b>Authority Required</b>	<p>1) Authority to proceed with Low Value Contract may be given by Officers who have the appropriate authorisation under the Council's financial rules to approve the level of expenditure being made; and</p> <p>2) who have also been given delegated power to authorise and proceed with contracts under the relevant Service Area delegations.</p>

<b>Who to contact for advice</b>	Service Area Contract Officers Legal Services Procurement Team Risk Management and Insurance Team
<b>Who signs?</b> (including electronic signature)	Chief Officers; Procuring Officers (subject to them having the authority to approve the relevant expenditure under the Council's financial systems) and Contract Officers with appropriate delegation from their Chief Officer (see section 3.1 of these Contract Procedure Rules)
<b>Storage and retention of Contracts</b>	Contract Officers must ensure a record of each contract is held within its Service Area and that details are retained on file for three years after the end of the term of the relevant contract

<b>Value of Contract</b> →	<p align="center"><b>Minor Contracts:</b></p> <p align="center"><b>Over £10,000 to £50,000</b></p> <p align="center">↓</p>
<b>Type of Agreement to be used to evidence contract terms</b>	<p>1) Council's Official Purchase Order Form incorporating the Council's General Terms and Conditions together with any specific terms required for the goods, works services purchased; or</p> <p>2) Acceptance letter incorporating Council's General Terms and Conditions as appropriate together with any specific terms required for the goods, works services purchased; or</p> <p>3) Bespoke Agreement; or</p> <p>4) Industry standard form such as NEC, JCT, JClI, ACE, RIBA &amp; ICE may be used, in each case incorporating the Council's General Terms and Conditions where applicable or appropriate.</p> <p><b>Note:</b> In cases where the contract value is low but risk is significant, Procuring Officers should</p>

	consider a bespoke agreement and refer to Legal Services for advice as to the terms to be included.
<b>Where to obtain form of Agreement/Contract</b>	<ol style="list-style-type: none"> <li>1) Official Purchase Orders are available via the Council's ERP system.</li> <li>2) The Council's General Terms and Conditions are available from the Council's Procurement Team's web pages.</li> <li>3) For bespoke agreements, please refer to Legal Services for advice.</li> <li>4) Industry standard forms need to be purchased from external suppliers as appropriate.</li> </ol>
<b>Authority Required</b>	<ol style="list-style-type: none"> <li>1) Authority to proceed with Minor Contracts may be given by Officers who have the appropriate authorisation in the Council's financial rules to approve the level of expenditure being made; and</li> <li>2) who have also been given delegated power to authorise and proceed with contracts under the relevant Service Area delegations.</li> </ol>
<b>Who to contact for advice</b>	<ol style="list-style-type: none"> <li>1) Service Area Contract Officers</li> <li>2) Legal Services (Legal Services can provide bespoke terms if none of the industry standard available forms of contract are appropriate)</li> <li>3) Procurement Team</li> <li>4) Risk Management and Insurance Team</li> </ol>
<b>Who signs?</b> (including electronic signature)	Chief Officers; Procuring Officers (subject to them having the authority to approve the relevant expenditure under the Council's financial systems) and Contract Officers with appropriate delegation from their Chief Officer (see section 3.1 of these Contract Procedure Rules)
<b>Storage and retention of Contracts</b>	Contract Officers must ensure that a record of contract is held within its Service Area. Contract Officers must provide details to the Council's Procurement Team of any contracts let of a value of £50,000 or more for inclusion in the Centralised Contracts Register. Details and copies of Minor Contracts should be retained for a period of six years after their expiry (see Section 9.20).

<b>Value of Contract</b> →	<p><b>Ordinary Contracts:</b></p> <p><b>Over £50,000 to £170,000</b></p> <p>↓</p>
<b>Type of Agreement to be used to evidence contract terms</b>	<p>1) Standard forms of Agreements are available for Goods, Services, Works and Consultancy contracts. Industry standard forms include: NEC, JCT, Jcli, ACE, RIBA &amp; ICE . These forms may be used, incorporating where appropriate and applicable the Council's General Terms and Conditions. Advice should be sought from Legal Services as to the application of the Council's General Terms and Conditions when using industry standard forms.</p> <p>Or</p> <p>2) Bespoke Agreement (refer to Legal Services for advice as to appropriate terms to include).</p>
<b>Where to obtain form of Agreement/Contract</b>	<p>1) For bespoke agreements, please refer to Legal Services for advice.</p> <p>2) Industry standard forms need to be purchased from external suppliers as appropriate (the Council's General Terms and Conditions are on the Procurement Team's web pages).</p>
<b>Authority Required</b>	<p>Authority to proceed with an Ordinary Contract level procurement may be given by:</p> <p>1) Chief Officers in accordance with their delegations under the Council's Constitution.</p> <p>2) By Minutes of a Council Resolution/ Cabinet.</p> <p>3) By any other Officer who has the appropriate authority under the Council's financial rules to approve the level of expenditure being made <b>and</b> who has also been given delegated power to authorise and proceed with contracts under the relevant Service Area delegations.</p>
<b>Who to contact for advice</b>	<p>1) Service Area Contract Officers</p> <p>2) Legal Services (Legal Services can provide bespoke terms if none of the industry standard</p>

	<p>available forms of contract are appropriate)</p> <p>3) Procurement Team</p> <p>4) Risk Management and Insurance Team</p>
<p><b>Who signs?</b> (including electronic signature)</p>	<p>If the agreement is a simple contract (i.e. not a Deed):</p> <p>Chief Officers together with either:</p> <p>1) one other Chief Officer;</p> <p>2) a Procuring Officer with appropriate authorisation under the Council's financial rules together with delegated authority from a Chief Officer to sign Ordinary Contracts in accordance with the Council's Constitution;</p> <p>3) Contract Officers with appropriate delegation from a Chief Officer in accordance with the Council's Constitution to sign Ordinary Contracts.</p> <p>Or, If the agreement is signed as a Deed:</p> <p>By affixing the Council's common seal and witnessed by an Officer authorised to do so in accordance with the Council's Constitution.</p>
<p><b>Storage and retention of Contracts</b></p>	<p>Contract Officers must advise the Council's Procurement Team of contracts let in this category in order that the details may be recorded on the Centralised Contracts Register. One original copy of the contract will be held in the Council's approved records management system (whether hard copy or electronic) and the Service Area should retain a copy for operational purposes. Periods of retention will depend upon whether the contract has been executed as a simple contract (signed by appropriately authorised officers without the use of the Council's seal) (six year retention period) or by deed affixing the Council's seal (12 year retention period)</p>

<b>Value of Contract</b> →	<p><b>Major Contracts:</b>  <b>£170,000 and over</b></p> <p>↓</p>
<b>Form of Agreement to be used to evidence contract terms</b>	<p>1) Standard forms of Agreements are available for Goods, Services, Works and Consultancy contracts. Industry standard forms include: NEC, JCT, Jcli, ACE, RIBA &amp; ICE . These forms may be used, incorporating where appropriate and applicable the Council's General Terms and Conditions. Advice should be sought from Legal Services as to the application of the Council's General Terms and Conditions when using industry standard forms.</p> <p>Or</p> <p>2) Bespoke Agreement (refer to Legal Services for advice as to appropriate terms to include).</p>
<b>Where to obtain form of Agreement/Contract</b>	<p>1) For bespoke agreements, please refer to Legal Services for advice.</p> <p>2) Industry standard forms need to be purchased from external suppliers as appropriate (the Council's General Terms and Conditions are available from the Procurement Team's web pages).</p>
<b>Authority Required</b>	<p>Authority to proceed with a Major Contract level procurement may be given by:</p> <p>1) Chief Officers in accordance with their delegations under the Council's Constitution.</p> <p>2) By Minutes of a Council Resolution/ Cabinet.</p> <p>3) By any other Officer who has the appropriate authority under the Council's financial rules to approve the level of expenditure being made <b>and</b> who has also been given delegated power to authorise and proceed with contracts under the relevant Service Area delegations.</p>
<b>Who to contact for advice</b>	<p>1) Procurement Team.</p> <p>2) Legal Services.</p>

	<p>3) Risk Management and Insurance Team</p> <p>4) Internal Audit – for financial standing evaluation</p>
<p><b>Who signs?</b> (including electronic signature)</p>	<p>If the agreement is a simple contract (i.e. not a Deed):</p> <p>The Assistant Director - Legal and Governance together with one other Officer that has had authority delegated to them by the Chief Executive or Assistant Director - Legal and Governance;</p> <p><b>or</b></p> <p>If the agreement is signed as a Deed:</p> <p>By affixing the Council's common seal and witnessed by an Officer authorised to do so in accordance with the Council's Constitution</p>
<p><b>Storage and retention of Contracts</b></p>	<p>Contract Officers must advise the Council's Procurement Team of contracts let in this category in order that the details may be recorded on the Centralised Contracts Register. One original copy of the contract will be held in the Council's approved records management system (whether hard copy or electronic) and the Service Area should retain a copy for operational purposes. Periods of retention will depend upon whether the contract has been executed as a simple contract (signed by appropriately authorised officers without the use of the Council's seal) (six year retention period) or by deed affixing the Council's seal (12 year retention period)</p>

## **7. Low Value Contracts (£0 - £10,000):**

- (A) Procuring Officers should first ensure compliance with paragraphs 4.1 – 4.12 of these Contract Procedure Rules i.e. by identifying the need for the goods, services or works required; that there is authority to proceed to purchase the goods, services or works and that there is sufficient budget available.
- (B) Procuring Officers should satisfy themselves that they are able to address all issues appropriate to their procurement activity and should use the Procurement Checklist as a reminder of the matters that they should consider prior to undertaking any procurement activity. Where there is any doubt, Procuring Officers should consult with the Council's Legal Services Team or Procurement Team as appropriate.
- (C) Officers should consult with the Council's Procurement Team to ensure that the required goods, works or services are not available via any pre-existing contractual arrangements. If this is the case then Procuring Officers should proceed as follows:

### **7.1 Obtaining Quotes:**

- 7.1.1 Procuring Officers must obtain at least two verbal quotes or, if practical, two written quotes for the goods, works or services required. At least one of these quotes should be obtained from a provider based in Shropshire unless it can be proven that there is no provider based in Shropshire that is able to supply or provide the goods or services required. Procuring Officers must use all reasonable endeavours to establish if appropriate providers exist within Shropshire.
- 7.1.2 A request for a quotation must state that the Council does not bind itself to accept the lowest or any quotation
- 7.1.3 Quotes should be for a fixed price.

### **7.2 General Terms and Conditions:**

- 7.2.1 Procuring Officers must, wherever possible, insist upon the application of the Council's General Terms and Conditions to contract agreements for the provision



of goods, services or works and consider the need for any additional contract provisions depending on the nature of the contract. Where this not possible, Procuring Officers must refer to Legal Services for advice and authority to proceed under alternative terms and conditions.

- 7.2.2 The Council's up to date General Terms and Conditions are available via the Council's Procurement Team and the Council's intranet and Legal Services. Procuring Officers must ensure that they seek advice as to the most up to date version of the General Terms and Conditions prior to issuing them to any third party.

### **7.3 Payment:**

Unless otherwise agreed by a Chief Officer, all payment arrangements with suppliers/providers must be made in arrears upon satisfactory evidence of performance, receipt of goods or completion of works in accordance with the Council's General Terms and Conditions and Financial Rules. The Procurement Regulations require prompt payment of contractors and the Council is required to pay undisputed invoices within 30 days (subject to any contractual or statutory obligation to pay earlier), and any subcontract awarded by the Contractor should include the same provisions, and ensure that such terms are passed down through the supply chain.

### **7.4 Record Keeping:**

A copy of the Procurement Checklist must be retained on the procurement file and records of quotes and file notes must be retained for a period of at least three years (or the duration of the contract whichever is longer) for audit purposes.

### **7.5 Extension/Variation/Overspend:**

- 7.5.1 Procuring Officers **must not** enter into extensions, variations or overspends which would extend the value of the contract beyond £10,000 or where there is no budgetary approval to do so.

7.5.2 All extensions, variations and overspends must be authorised in accordance with the relevant Service Area delegations and agreed in writing with the contractor/supplier **and only** where provision for an extension has been included in the original contract documentation.

## **7.6 Sensitive or Confidential Information:**

If any Low Value contract involves the handling of sensitive or confidential information or involves any other issue which in the opinion of the Procuring Officer creates a significant risk to the Council they should contact the Director of Legal and Democratic Services for advice as to how to proceed.

## **7.7 Notification of Contract Award:**

The Procuring Officer must confirm in writing the acceptance of a quote by issuing a Council Official Purchase Order.

## **7.8 Letters of Intent:**

A Letter of Intent may be appropriate in circumstances where it is necessary to authorise a contractor to commence specific preparation works or purchases in advance of commencing works under formal contract arrangements. An improperly drafted Letter of Intent may lead to unintended content in a legally binding contract and care must always be taken to ensure that such letters are properly constructed and legal advice has been taken before such letters are issued.

Letters of Intent ahead of the formalisation of contract agreements may only be used in exceptional circumstances and only with the approval of the Assistant Director - Legal and Governance. **No Letter of Intent should be issued to a contractor or supplier without the Procuring Officer first seeking the advice and approval of Legal Services.**

As Letters of Intent are contracts they should be signed in accordance with the relevant Contract Procedure Rules relating to their value.

## **7.9 Form of Contract:**

7.9.1 A contract will be formalised either by:

7.9.1.2 the placing of an order using the Council's Official Purchase Order form incorporating the Council's General Terms and Conditions together with any additional terms and conditions appropriate to the contract;

**or**

7.9.1.3 by the issue of an Acceptance Letter incorporating the Council's General Terms and Conditions that apply **(Please note: that where an Acceptance Letter is issued subject to further terms being agreed, and the contract being finalised, the Acceptance Letter must always be headed "subject to contract")**;

**or**

7.9.1.4 by the completion of a contract agreement as referred to in Table 4 above

When deciding upon the form of agreement to be used to formalise a contract, Procuring Officers should take into consideration the value of the contract and the level of risk associated with that contract. If in any doubt, Procuring Officers should seek advice from Legal Services or the Procurement Team as to the most appropriate form of contract agreement to be used.

7.9.2 All Purchase Orders, Acceptance letters (as referred to in 7.9.1 above) and contract agreements, irrespective of value, shall clearly specify:

7.9.2.1 The full legal names and addresses of the parties

7.9.2.2 where the contractor/supplier is a company, its registered office and company registration number should be stated.

7.9.2.3 What is to be supplied (e.g. the works, materials, services, matters or things to be furnished, had or done).

7.9.2.4 The provisions for payment (e.g. the price to be paid and when).

- 7.9.2.5 Where appropriate, the time, or times, within which the contract is to be performed.
- 7.9.2.6 A termination clause in accordance with Section 4.10 of these Contract Procedure Rules

## **7.10 Finalising Low Value Contracts**

Official Purchase Order forms, Acceptance letters or agreements may be signed by any Officer that has the relevant authority under the Council's financial rules to authorise the expenditure being made together with authority granted to them in accordance with the relevant Service Area delegations given by a Chief Officer (see section 3.5 of these Contract Procedure Rules)

### **Reminder:**

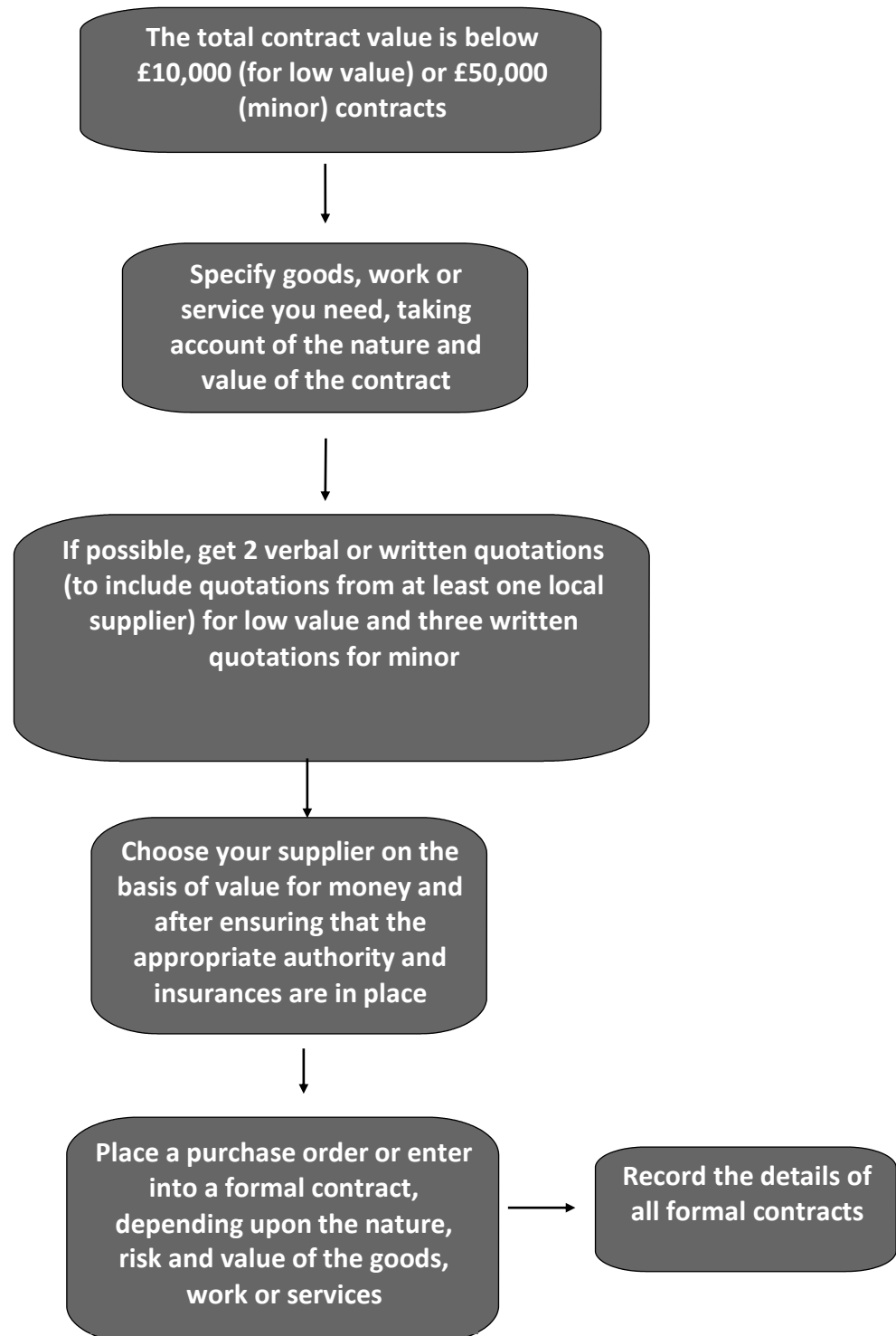
- **The Council is obliged to publish all items of expenditure on goods, services and works which exceed £500 in value. Prior to placing any order, all Officers must consider whether the expenditure can be justified. Orders must not be artificially split with the intention of bringing the value of each order below £500, or to avoid a contract threshold, or order less than is actually required.**
- The principles of **transparency, non-discrimination and equality and social value** are obligations that apply to all procurements and must be complied with at all times.

### **Finally Please Note:**

**Contracts MUST be signed before works or services are commenced, or site access given or any expenditure commitment is made, to ensure that the Council's position is protected. Making or agreeing payments to a contractor or supplier before a contract is signed is a breach of these Contract Procedure Rules UNLESS a Letter of Intent has been authorised and is in place.**

Failure to comply with any of these Contract Procedure Rules may result in **disciplinary action and legal proceedings** against the Officer or third parties concerned.

## Simplified process for low value or minor contracts



## **8. Minor Contracts (£10,000.00- £50,000.00):**

- (A) Procuring Officers should first ensure compliance with paragraphs 4.1 – 4.12 of these Rules i.e. by identifying the need for the goods, services or works required; that there is authority to proceed to purchase the goods, services or works and that there is sufficient budget available.
- (B) Procuring Officers should satisfy themselves that they are able to address all issues appropriate to their procurement activity and should use the Procurement Checklist as a reminder of the matters that they should consider prior to undertaking any procurement activity. Where there is any doubt, Procuring Officers should consult with the Council's Legal Services Team or Procurement Team as appropriate.
- (C) Procuring Officers should consult with the Council's Procurement Team to ensure that the required goods, works or services are not available via any pre-existing contractual arrangements. If goods, works or services are not otherwise available then Procuring Officers should proceed as set out below.
- (D) Procuring Officers should advise the Council's Procurement Team of any contracts with a value of £25,000 or more (net of VAT) as the Council must publish contract opportunities on Contracts Finder whenever they exceed this value in accordance with Regulation 110 of the Procurement Regulations.

### **8.1 Obtaining Quotes:**

- 8.1.1 Procuring Officers must obtain at least three written quotes to ensure best value, fair competition, savings and efficiency. At least one of these quotes should be obtained from a provider based in Shropshire unless it can be proven that there is no provider based in Shropshire that is able to supply or provide the goods or services required. Procuring Officers must use all reasonable endeavours to establish if appropriate providers exist within Shropshire.
- 8.1.2 A request for a quotation must state that the Council does not bind itself to accept the lowest or any quotation.

- 8.1.3 Quotes should be for a fixed price and orders must be placed with the contractor or supplier using the Council's Official Purchase Order form with the Council's General Terms and Conditions attached or form of agreement appropriate to the nature of the goods/services being procured (see Section 8.9 below and table 4 above).
- 8.1.4 Requests for quotations may be issued electronically using a system approved by the Council and in accordance with the guidelines set out in Section 9.8 of these Contract Procedure Rules.
- 8.1.5 Requests for quotations must be advertised on the Council's web pages which list current tendering opportunities and where the value of the contract is over £25,000 the opportunity must be published on Contracts Finder in accordance with the Procurement Regulations. Procuring Officers should request the Procurement Team to make the necessary arrangements.

## **8.2 General Terms and Conditions:**

- 8.2.1 Procuring Officers must, wherever possible, insist upon the Council's relevant standard terms and conditions being incorporated into contract agreements as appropriate for the provision of goods, services or works and consider the need for any project specific contract provisions depending on the nature of the contract. Where this not possible e.g. where a supplier provides its own terms and conditions, Procuring Officers must refer to Legal Services for advice and authority on how to proceed with respect to such terms and conditions.
- 8.2.2 For guidance purposes, the Council's up to date General Terms and Conditions are available via the Council's Procurement Team and the Council's intranet and Legal Services. Procuring Officers must ensure that they seek advice as to the most up to date version of the General Terms and Conditions before issuing them to any third party.

## **8.3 Payment:**

Unless otherwise agreed by a Chief Officer, all payment arrangements must be made in arrears upon satisfactory evidence of performance, receipt of goods or completion of

works in accordance with the Council's General Terms and Conditions and Financial Rules. The Procurement Regulations require prompt payment of contractors and the Council is required to pay undisputed invoices within 30 days (subject to any contractual or statutory obligation to pay earlier), and any subcontract awarded by the Contractor should include the same provisions, and ensure that such terms are passed down through the supply chain.

#### **8.4 Record Keeping:**

A copy of the completed Procurement Checklist should be retained on file and all records (which shall include but not limited to, the procurement file, tender/quote, acceptance letter, the reasons for not obtaining a bond, the form of agreement and all notes of meetings and/or telephone calls pertaining to the contract) must be retained for a period of at least six years after the completion of the contract (or the duration of the contract whichever is longer) for audit purposes.

#### **8.5 Extension/Variation/Overspend:**

- 8.5.1 Procuring Officers **must not** enter into extensions, variations or overspends which would extend the value of the contract beyond £50,000 or where there is no budgetary approval to do so.
- 8.5.2 All extensions, variations and overspends must be authorised in accordance with the relevant Service Area delegations and agreed in writing with the contractor/supplier **and only** where provision for an extension has been included in the original contract documentation

#### **8.6 Sensitive or Confidential Information:**

If any Minor contract involves the handling of sensitive or confidential information or involves any other issue which in the opinion of the Procuring Officer creates a significant risk to the Council they should contact the Assistant Director - Legal and Governance for advice as to how to proceed.

#### **8.7 Notification of Contract Award:**



- 8.7.1 The Procuring Officer, once the necessary authority from the Council to proceed has been obtained, must confirm in writing the acceptance of a quote by issuing a Council Official Purchase Order or Acceptance Letter. Where an Acceptance Letter is issued subject to agreeing contractual terms and before the contract is finalised, the acceptance in writing **must** always be headed “subject to contract” to avoid inadvertently creating a binding contract between the Council and the proposed supplier/provider.
- 8.7.2 The Procuring Officer must notify the appropriate Contract Officer in writing of any contract that has been awarded with a total value of £10,000 or more.

## **8.8 Letters of Intent:**

A Letter of Intent may be appropriate in circumstances where it is necessary to authorise a contractor to commence specific preparation works or purchases in advance of commencing works under formal contract arrangements. An improperly drafted Letter of Intent may lead to unintended content in a legally binding contract and care must always be taken to ensure that such letters are properly constructed and legal advice has been taken before such letters are issued.

Letters of Intent ahead of the formalisation of contract agreements may only be used in exceptional circumstances and only with the approval of the Assistant Director - Legal and Governance. **No Letter of Intent should be issued to a contractor or supplier without the Procuring Officer first seeking the advice and approval of Legal Services.**

As Letters of Intent are contracts they should be signed in accordance with the relevant Contract Procedure Rules relating to their value.

## **8.9 Form of Contract:**

- 8.9.1 A contract will be formalised either:

- 8.9.1.1 by the placing of an order using the Council's Official Purchase Order form in accordance with Section 8.1.3 above; or
- 8.9.1.2 by the issue of an Acceptance Letter incorporating the Council's General Terms and Conditions that apply **(Please note: that where an Acceptance Letter is issued subject to further terms being agreed and the contract being finalised, the Acceptance Letter must always be headed "subject to contract")**; or
- 8.9.1.3 if appropriate, by the formation of a bespoke agreement incorporating the Council's General Terms and Conditions (as appropriate) in consultation with Legal Services; or
- 8.9.1.4 by using an industry standard form of agreement as referred to in table 4 above appropriate to the goods/services/works being procured

When deciding upon the form of agreement to be used to formalise a contract, Procuring Officers should take into consideration the value of the contract and the level of risk associated with that contract. If in any doubt, Procuring Officers should seek advice from Legal Services or the Procurement Team as to the most appropriate form of contract agreement to be used.

8.9.2. All Agreements or orders relating to contracts, irrespective of value, shall clearly specify:

- 8.9.2.1 The full legal names and addresses of the parties – where the contractor/suppliers is a company, its registered office and company registration number should be stated
- 8.9.2.2 What is to be supplied (e.g. the works, materials, services, matters or things to be furnished, had or done)
- 8.9.2.3 The provisions for payment (e.g. the price to be paid and when)
- 8.9.2.4 Where appropriate, the time, or times, within which the contract is to be performed
- 8.9.2.5 A termination clause in accordance with Section 4.10 of these Contract Procedure Rules

## **8.10 Finalising Minor Contract Documents:**

8.10.1 Minor Contracts may be signed by any Officer that has both the relevant authority under the Council's financial rules to authorise the expenditure being made **and** authority granted to them in accordance with the relevant Service Area delegations given by a Chief Officer (see section 3.1 of these Contract Procedure Rules)

### **Reminder:**

- **The Council is obliged to publish all items of expenditure on goods, services and works which exceed £500 in value. Prior to placing any order, Officers must consider whether the expenditure can be justified. Orders must not be artificially split with the intention of bringing the value of each order below £500, or to avoid a contract threshold, or order less than is actually required.**
- The principles of **transparency, non-discrimination and equality and social value** are obligations that apply to all procurements and must be complied with at all times.

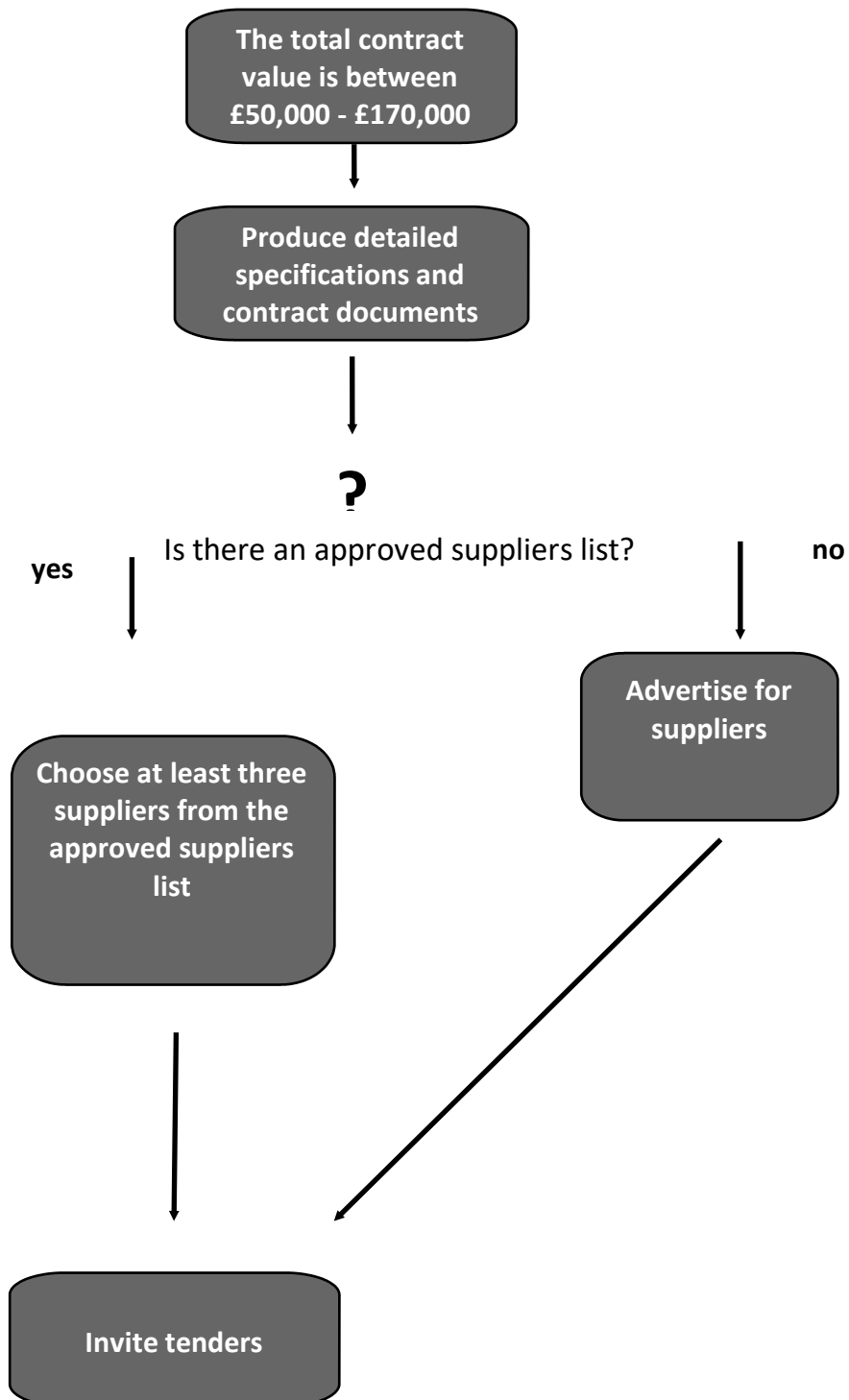
### **Finally, Please Note:**

- **Contracts MUST be signed before works or services are commenced, or site access given or any expenditure commitment is made to ensure that the Council's position is protected. Making payments to a contractor or supplier before the contract is signed is a breach of these Contract Procedure Rules unless a Letter of Intent has been authorised and is in place.**
- Failure to comply with any of these Contract Procedure Rules may result in **disciplinary action and legal proceedings** against the Officer or third parties concerned.

## 9. Ordinary Contracts( £50,000.00- £170,000.00):

- (A) Procuring Officers should first ensure compliance with paragraphs 4.1 – 4.12 of these Contract Procedure Rules i.e. by identifying the need for the goods, services or works required; that there is authority to proceed to purchase the goods, services or works and that there is sufficient budget available.
- (B) Procuring Officers should satisfy themselves that they are able to address all issues appropriate to their procurement activity and should use the Procurement Checklist as a reminder of the matters that they should consider prior to undertaking any procurement activity. Where there is any doubt, Procuring Officers should consult with the Council's Legal Services Team or Procurement Team as appropriate.
- (C) Procuring Officers **must** contact the Council's Procurement Team at the commencement of all procurement activities over £50,000 to agree the appropriate procurement process which will ensure value for money and adequate competition and to ensure that the required goods, works or services are not available via any pre-existing contractual arrangements
- (D) A tender process for Ordinary contracts usually contains 2 main stages: tender and evaluation. All steps in the process are set out in the summary flow chart overleaf.
- E) Procurements of this value can take up to 6 months to complete and Procuring Officers need to ensure that they set aside adequate time and resources.

## Process for Ordinary Contracts



## **9.1 Specification:**

9.1.1 Procuring Officers are responsible for drafting a clear and robust specification for all procurements over £50,000. The specification must set out exactly what the Council requires and timescales for delivery. This will ensure that what is sought from the procurement exercise is clearly documented and will enable tenders received to be accurately compared. Specifications can include:

- the task(s) required, volume and frequency
- the level of input, time and resources required or the outputs required
- the standards of performance expected
- the length of any contract and any other details not included elsewhere
- quality of materials
- relevant Council policies

Or, should specify the 'outputs' and timescales to be achieved. Advice should be sought from the Procurement Team with respect to the appropriate form of specification.

9.1.2 If a Procuring Officer requires suppliers to propose solutions for delivery this must be specified and criteria designed to assess proposals.

9.1.3 If in any doubt as to what should be included in a specification, Procuring Officers should seek advice from the Council's Procurement Team

## **9.2 Evaluation Criteria:**

9.2.1 The way in which tenders will be evaluated must be properly considered and documented before the start of any procurement process.

9.2.2 **Before** sending out invitations to tender Procuring Officers must decide on the criteria to be used for assessing tenders ("evaluation criteria").

9.2.3 Evaluation criteria are the basis on which scores are given to assess bidder's responses. Procuring Officers must define evaluation criteria that are appropriate to the purchase of goods, works or services specified and to secure value for

money for the Council. Criteria will depend on the procurement in question but might include:

- price
- technical standards
- quality of goods/services proposed
- financial stability
- level of resources available
- experience and skills
- relevant environmental considerations
- contract management
- quality management proposals
- delivery proposals
- aesthetic and functional characteristics (including security and control features)
- after-sales and technical assistance
- social value
- functionality and interfacing requirements
- future proofing
- any other relevant matters

9.2.4 Criteria must **not**:

- include non-commercial considerations
- prevent fair competition
- discriminate between tenderers in any way; and
- contravene any relevant English laws

9.2.5 Procuring Officers should seek advice from the Council's Procurement Team about the process and setting of evaluation criteria. Once evaluation criteria have been fixed, they cannot be changed after invitations to tender have been issued.

9.2.6 All criteria including sub-criteria and weightings attached to criteria must be fully disclosed in the invitation to tender documents. This will ensure that the Council is not subject to challenge and that evaluation of criteria is fair and transparent.

### **9.3 Invitations to Tender**

9.3.1 In addition to the points referred to in paragraphs 9.3.2 -9.3.9 onwards, all Invitations to Tender shall include the following:

- 9.3.1.1 A specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers.

- 9.3.1.2 A requirement for tenderers to declare that the tender content, price or any other figure or particulars concerning the tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose).
- 9.3.1.3 a requirement for tenderers to complete fully and sign all tender documents (usually included as a 'Form of Tender' for signature).
- 9.3.1.4 Notification that tenders are compiled and submitted to the Council at the tenderers own expense.
- 9.3.1.5 Details of the award methodology and evaluation criteria.
- 9.3.1.6 Details of how Tenders must be submitted e.g. via the Council's electronic tendering system or via hard copy submissions etc. A hard copy submission process must state that no tender will be considered unless it is enclosed in a sealed envelope or container using the return label provided but no other name or mark indicating the sender.
- 9.3.1.7 A stipulation that any tenders submitted by fax or other electronic means shall not be considered (provided that the procurement exercise is not being conducted by electronic means in accordance with the procedures set out in Section 9.8).
- 9.3.1.8 the latest day and hour and place appointed for the receipt of tenders.
- 9.3.2 Invitations to Tender shall state that no Tender will be considered unless it is received by the date and time stipulated in the Invitation to Tender.
- 9.3.3 The Invitation to Tender must state that the Council is not bound to accept any tender.
- 9.3.4 Where a contract will include TUPE transfers of staff, anonymised details of staff and details of pension arrangements should be included.
- 9.3.5 All Invitations to Tender must specify the terms and conditions of the contract that will apply.



- 9.3.5.1 Procuring Officers may require bespoke terms if procuring specialist services or goods such as IT equipment or software. Legal Services must be contacted in such circumstances.
- 9.3.5.2 Procuring Officers must always consider existing contractual terms and industry standards. These options should be highlighted to Legal Services and advice taken on the most appropriate form.
- 9.3.5.3 The Council's General Terms and Conditions or approved industry standard terms (issued by a relevant professional body) must be used or incorporated wherever possible and appropriate. Where this not possible, Procuring Officers must refer to Legal Services for advice and authority to proceed under alternative terms and conditions.
- 9.3.6 A Procuring Officer, in consultation with the Director of Finance, Governance and Assurance must ensure that the Invitation to Tender documents, where appropriate depending on an assessment of the risk associated with the subject matter of the tender, stipulate that the successful tenderer may be required to provide a Performance Bond with a third party and/or where appropriate, provide Collateral Warranties from nominated sub-contractors.
- 9.3.7 The Invitation to Tender and all supplementary information must be issued at the same time and subject to the same conditions, ensuring that all potential bidders receive identical information.
- 9.3.8 Procuring Officers must give all tenderers the same information relating to questions, answers and clarifications raised during the procurement exercise unless they relate solely to another person's tender.
- 9.3.9 All Invitations to Tender must specify the method by which tender are to be submitted, whether via the Council's electronic tendering system or returned by hand or by post to the Council's Committee Services Supervisor, Shirehall, Abbey Foregate, Shrewsbury SY2 6ND (unless the procurement exercise is being conducted electronically in which case the procedures to be followed are to be found in Section 9.8 of these Rules)

Further guidance regarding the issue and return of Invitations to Tender should be always be sought by Procuring Officers from the Council's Procurement Team prior to the issue of Invitations to Tender.

**REMINDER:**

**When assessing Invitation to Tender responses Procuring Officers must:**

- 1) Ensure that the tender response complies in all respects with the evaluation criteria and the information required to be provided by the Invitation to Tender**
- 2) Ensure that all insurance information provided by a tenderer are checked e.g. that the insurance cover offered covers protection for the nature of the work to be undertaken; that insurance is provided at the required financial levels; that the insurances are valid and will remain valid for the duration of the proposed contract (e.g. check expiry dates); and that the insurance is in the name of the legal entity submitting the tender**
- 3) Either:**
  - 3.1 where the tender response or other information obtained by the Procuring Officer raises concerns as to the financial stability of the preferred tenderer; or**
  - 3.2 the nature of the contract is such that it is a “key contract” for the Council e.g. it relates to key services or business continuity etc.**

**Procuring Officers should consider taking advice from Internal Audit as to the need for a financial check on the preferred tenderer**
- 4) Ensure that they have checked that the preferred tenderer will have in place all of the necessary and required licences, consents, permits and accreditations to enable it to perform the proposed contract**

#### **9.4 Receipt and Opening of Tenders (where Tenders are submitted in hard copy format):**

- 9.4.1** The Committee Services Supervisor shall be responsible for the receipt, secure custody and opening of tenders and shall ensure that the procedure is conducted

in an open and transparent manner. More information concerning the procedures to be followed may be found in the Guidance Notes published by the Council's Procurement Team on the Council's website and intranet pages relating to procurement. Under no circumstances may a tender be opened prior to the designating opening time.

- 9.4.2 No tender will be considered unless received by the Committee Services Supervisor in a plain envelope clearly identified as a tender followed by the subject or reference to which the bid relates. It should not bear any other distinguishing matter or mark to indicate the identity of the sender
- 9.4.3 Tenders will be opened in a secure environment one at a time by the Committee Services Supervisor or their authorised representatives ensuring that at least two Officers are present, at least one of which must be independent of the decision making process. Each Officer present must initial each tender once opened and each tender must be date stamped.
- 9.4.4 Particulars of all tenders opened, together with all irregular tenders, must be recorded by the Committee Services Supervisor or their authorised representative on a 'Opening of Tenders Form' including the date and time if opening, which must be signed by the Officers present at the opening.
- 9.4.5 Once tenders have been opened, they should be held in a secure place and delivered as soon as possible to the Procuring Officer responsible for the tender.

## **9.5 Receipt and Opening of Tenders (Electronic Format):**

- 9.5.1 Tenders which are received electronically via the official Council e-tendering system will be opened by a representative authorised by the Committee Services Supervisor. The Procuring Officer who invited the tender will automatically be notified by e-mail when the tender submissions are available for viewing.
- 9.5.2 The Council's e-tendering system will not allow any tenders to be opened until the allocated return date and time. For more information on electronic procedures please refer to Section 9.8 of these Rules.

## **9.6 Extending the Tender Deadline and Late Tenders:**

In exceptional circumstances the Procurement Manager, in consultation with the Assistant Director - Legal and Governance, may:

9.6.1 extend the deadline for submission of tenders. All known potential tenderers should be notified of the amended submission date and time as soon as possible following the decision to extend the deadline;

9.6.2 allow a late tender to be submitted after the deadline provided:

- The tenderer has contacted the Procurement Manager and provided them with evidence that a genuine attempt to submit the tender prior to the deadline was made which was prevented by matters outside of their control, and
- None of the tenders submitted in respect of the subject of the procurement have been opened at that time. If a submitted tender has already been opened, no later tenders shall be permitted.

The reasons for any extension of the tender deadline or for allowing a late tender to be submitted shall be recorded by the Procurement Manager.

## **9.7 Irregular Tenders:**

9.7.1 A tender is not valid unless it has been delivered to the place appointed in the manner specified, by the appointed date and hour specified in the Invitation to Tender document.

9.7.2 A hard copy tender is not valid unless it has been received in a plain sealed envelope or parcel addressed to the Committee Services Supervisor. The envelope must only bear the word “tender” followed by the subject to which it relates with no other identifying marks.

9.7.3 Electronic tenders shall not be valid unless submitted via the Council’s e-tendering portal in accordance with 9.8 below;

9.7.4 Where a tender is received that does not comply fully with the instructions given in the Invitation to Tender documents the tender should be rejected.

- 9.7.4 Irregular tenders that have been rejected by the Committee Services Supervisor must be returned to the tenderer by the Procuring Officer with a covering letter/e-mail stating the reason for rejection.

## **9.8 Electronic Tendering Processes:**

- 9.8.1 This section of these Contract Procedure Rules shall apply to any tendering procedure using electronic means. The remainder of the Contract Procedure Rules shall continue to apply to any tendering procedure using electronic means except to the extent that they are inconsistent with this section.
- 9.8.2 A Procuring Officer may conduct any tendering exercise or a negotiated procedure using electronic means ("eprocurement"), provided that:
- 9.8.2.1 the prior approval of the Director of Finance, Governance and Assurance and Assistant Director - Legal and Governance has been obtained if the Council's standard e-tendering system is **not** being used;
  - 9.8.2.2 the e-procurement is to take place using a system approved by the Council which must use a secure electronic tender vault and is transparent and fair to all participants;
  - 9.8.2.3 The system used must not allow late tenders or tenders sent in the wrong format or sent to the wrong address to be received and
  - 9.8.2.4 to do so would not significantly restrict or distort competition.
- 9.8.3 Where e-procurement is being used, the Procurement Manager must consider whether it is appropriate to impose any specific requirements regarding verification and authentication of the tender submission and the signature of the person making that submission.
- 9.8.4 Any tender document issued using electronic means must state whether the Council has any specific requirements relating to authentication or verification of the tender submission or of the signature of the person making the submission.

9.8.5 Where e-procurement is being used any Invitation to Tender shall provide details of how to access the e-tendering system or other internet address which offers unrestricted and full direct access by electronic means to the Invitation to Tender documents.

9.8.6 This Section 9.8 shall replace Sections 9.4 and 9.6 in their entirety where e-procurement is used and the following provisions shall apply:

9.8.6.1 No tender submitted using electronic means will be considered unless it is received in the format requested by the Council in the Invitation to Tender Documents and via the e-tendering system or at the electronic address specified by the Council and unless it is received prior to the deadline for the receipt of tenders (except in the exceptional circumstances below), as stated in the Invitation to Tender documents.

9.8.6.2 The Committee Services Supervisor shall ensure that each tender is kept unopened in the designated secure area of the Council's e-tendering system or, where the Council's e-tendering system is not being used, a single secure electronic mailbox or secure area in an alternative tendering system, that cannot be opened before the deadline for the receipt of tenders.

9.8.6.3 The Committee Services Supervisor shall ensure that insofar as is reasonably practicable the system used does not allow the identity of the contractor submitting the tender to be revealed prior to the tender being opened after the deadline for the receipt of tenders.

9.8.6.4 The Committee Services Supervisor shall ensure that for each procurement project the system used shall keep and, if required, produce a record showing the time and date of receipt of all tenders received in respect of each e-procurement exercise.

9.8.6.5 The Procurement Manager in consultation with the Committee Services Supervisor and the Assistant Director - Legal and

Governance may extend the deadline for the submission of bids by notifying all potential tenderers of the extension in the following circumstances:

- i) prior to any bids being received by the Council; or
- ii) where bids have been received but before the Council is able to open those bids, due to the functionality of the e-procurement system or the failure of the Councils IT infrastructure.

In the circumstances in 9.8.6.5 ii) above, any tenderers who have already submitted bids may be given the opportunity to re-submit their bids. Where tenderers are permitted to re-submit bids, the same opportunity must be extended to all tenderers.

In exceptional circumstances the Procurement Manager in consultation with the Committee Services Supervisor and the Assistant Director - Legal and Governance may allow a late tender to be submitted shortly after the deadline provided the e-procurement system has recorded the Tenderer's attempts to submit the bid prior to the deadline and provided none of the tenders submitted in respect of the subject of the procurement have been opened at that time. If a submitted tender has already been opened, no late tenders shall be permitted.

The reasons for any extension of the tender deadline or for allowing a late tender to be submitted shall be recorded by the Procurement Manager.

9.8.7 All tenders for an e-procurement project shall be opened simultaneously and the Committee Services Supervisor shall ensure that for each e-procurement project a record showing the particulars of each tender received and the date and time when those tenders were opened and the identity of the officer opening the tenders shall be maintained on the e-procurement system.

9.8.8 Acceptance of tenders for e-procurement projects shall be in accordance with Section 9.12.

## **9.9 Electronic Auctions:**

- 9.9.1 The following provisions apply to the undertaking of electronic auctions by or on behalf of the Council:
- 9.9.1.1 For the purpose of these Contract Procedure Rules, the expression "electronic auctions" means:- A repetitive process involving an electronic device or the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.
  - 9.9.1.2 The Director of Finance, Governance and Assurance after consulting with the Assistant Director - Legal and Governance may authorise the carrying out of an electronic auction where satisfied that it is in the interests of the Council to do so and that the electronic auction is in accordance with the Procurement Rules.
  - 9.9.1.3 The Director of Finance, Governance and Assurance may only authorise the carrying out of an electronic auction where he/she is satisfied that the likely benefit of an electronic auction will outweigh the costs of undertaking the electronic auction.
  - 9.9.1.4 An electronic auction may only be carried out where the possibility of the use of an electronic auction has been stated in the Invitation to Tender documents issued to contractors and, where the Procurement Regulations apply, in the Contract Notice.
  - 9.9.1.5 For the avoidance of doubt, an electronic auction may be used where previous stages of a tendering procedure have not been undertaken using electronic means.
  - 9.9.1.6 Before proceeding with an electronic auction, the Procuring Officer of the service area shall make a full initial evaluation of the tenders in accordance with the award criteria set and with the weighting fixed for them. All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to submit new prices and/or new values.



- 9.9.1.7 Throughout each phase of an electronic auction the Council shall instantaneously communicate to all tenderers involved at least sufficient information to enable them to ascertain their relative rankings at any moment. The Council may also, at any time, announce the number of participants in that electronic auction. In no circumstances, however, may the Council disclose the identities of the tenderers during any phase of an electronic auction. If this occurs, the process becomes invalid and must be terminated.
- 9.9.1.8 Prior to the commencement of any electronic auction, the Council shall inform all tenderers involved the date and time fixed for the carrying out of the electronic auction and the proposed duration of the electronic auction together with any proposals for the extension of the duration of the electronic auction.
- 9.9.1.9 Any electronic auction will be subject to such additional procedural requirements as the Director of Finance, Governance and Assurance considers necessary.

## **9.10 Errors or discrepancies in tenders:**

- 9.10.1 A tender may be amended after it has been received and before it has been accepted only in order to correct an arithmetical error or other discrepancy made in good faith subject to:
- 9.10.1.1 the tenderer shall be given details of the error or discrepancy found during the examination of the tender and shall be given the opportunity of confirming the tender without amendment or withdrawing the tender; or
- 9.10.1.1 amending the tender to correct genuine arithmetic errors provided that in this case, apart from these arithmetic errors, no other adjustment, revision or qualification is permitted. In this case written confirmation should be requested from the tenderer as to the error or discrepancy and confirming what the corrected entry should be.

9.10.2 A written note of discussions with a tenderer must be made by Procuring Officers to record the suspected error, date, time, detail of the discussion and any agreement reached and retained on file for audit purposes.

9.10.3 Where the Council or its agents have made an error in the tender specification, the details of the error must be documented and advice sought from the Procurement Manager as to what course of action should be taken e.g. abandon and retender, communicate error and ask for revised prices or remove item from the evaluation (if only minor impact on the evaluation).

### **9.11 Discussions and Post Tender Negotiations:**

9.11.1 In the case where the Estimated Value of a contract is **below** the Procurement Regulations Threshold and following the closing date for receipt of tenders but before acceptance of any tender, the Procuring Officer may carry out Post Tender Negotiations in an attempt to secure improvements in the price or economic advantage in one or more of the following circumstances:

- 9.11.1.1 where the most competitive tender (according to the pre-determined award methodology and evaluation criteria) submitted exceeds the Estimated Value
- 9.11.1.2 where it is considered that the price of the most competitive tender submitted does not represent the best value for money that can reasonably be obtained;
- 9.11.1.3 where tenders have been invited only on the basis of unit prices or a schedule of rates and the lowest in aggregate is not the lowest on all terms;
- 9.11.1.4 where the most competitive tender contains conditions, trading terms, guarantees, or provisions relating to performance or service delivery less favourable than in other tenders, or than stipulated for and this defect appears capable of being remedied by Post Tender Negotiations.

9.11.2 When conducting Post Tender Negotiations, the following additional rules shall apply:

- 9.11.2.1 At no time during the negotiations must a tenderer be informed of the detail of any other tender (e.g. prices, terms and conditions) submitted or as to whether or not the tender he submitted was the lowest.
- 9.11.2.2 During negotiations in person there must always be at least two Officers of the Council present.
- 9.11.2.3 A note of the negotiations will be made by one of the Officers present, recording those present, the time and location of the negotiations, details of the discussion and any agreement reached and the written record shall be signed by at least two Officers and (where possible at least two representatives of the tenderer present at the meeting). Minor changes to a specification agreed by the client may be negotiated by one officer
- 9.11.2.4 Post Tender Negotiation shall not enable any material departure from the published specification. Legal Services must be consulted and shall determine whether any proposed change to the specification constitutes a material departure and whether as a consequence other tenderers shall be permitted to participate in Post Tender Negotiations and/or whether new tenders should be invited to avoid any potential allegations of competition being distorted.

## **9.12 Acceptance of Tenders:**

9.12.1 Tenders must be evaluated and contracts awarded in accordance with the evaluation criteria issued with the tender documentation. Only those tenders that comply with the evaluation criteria shall be considered for acceptance.

9.12.2 Tenders must be accepted on the basis of what is in the Council's best interests.

This will usually be:

- 9.12.2.1 the lowest tender where the Council is the purchaser or the highest tender where the Council is the supplier; or
- 9.12.2.2 the tender which will most comply with the Council's Social Values (as referred to in Section 4.8 of these Contract Rules); or
- 9.12.2.3 the tender which will be the most economically advantageous to the Council. In this case, where it is not the lowest, the Procuring Officer should explain in writing why that tender was chosen and obtain Chief Officer approval in writing to the fact that the tender other than the lowest tender has been accepted. All documentation relating to this decision must be placed on file before accepting the tender. For clarity, whole-life costs should be assessed when determining the most economically advantageous tender:
  - 9.12.2.3.1 In the case of capital works this includes taking into account the revenue impact of capital projects over a reasonable life for the asset (for example a slight increase in capital cost, such as energy management features, will reduce running costs).

In the event that two or more tenders provide the same level of quality at the same quoted cost, Social Value and/or environmental considerations (transport, packaging etc) (PROVIDED that Social Value and/or environmental considerations were included in the list of criteria included in the Invitation to Tender documentation) may be used to determine the successful bid if they are relevant to the contract.

9.12.3 If the tender to be accepted exceeds the budget which was agreed in accordance with Section 4.3, the Procuring Officer must ensure that sufficient funds are available and approved by the appropriate budget holder and appropriate Chief Officer prior to accepting the tender.

9.12.4 Consideration should be given as to whether or not a recommendation for awarding a contract should be put before Cabinet or Full Council for formal

approval **before** contacting the successful tenderer. If in doubt, advice must be sought from the relevant Chief Officer or the Chief Financial Officer/Assistant Director - Legal and Governance.

### **9.13 Notification of Contract Award:**

9.13.1 The Procuring Officer must notify in writing all tenderers, either successful or unsuccessful, who submitted a tender, of the decision as soon as possible after the decision has been made. Letters to successful tenderers may only be issued by Procuring Officers **once all necessary insurance and, financial (where requested) checks against the successful tenderer, and verification of any statutory requirements, consents or licences have been carried out and the necessary authority on behalf of the Council have been obtained.** See the Guidance Notes published by the Procurement Team on the Council's website and intranet pages relating to procurement for further information with regard to notifying unsuccessful tenderers.

9.13.2 Acceptance Letters must always be headed "Subject to Contract". Procuring Officers must ensure that care is taken when issuing Acceptance Letters to inform a tenderer that he/she has been successful. Unqualified Acceptance Letters may create a binding contract between the tenderer and the Council prior to the completion of formal contract documentation. In order to ensure that the Council is not contractually bound before all terms and conditions have been agreed.

9.13.3 The Procuring Officer must notify the appropriate Contract Officer in writing of any contract that has been awarded within this category.

### **9.14 Form of Contract:**

9.14.1 The form of contract to be used must be identified during the initial stages of a procurement process should be in accordance with that specified in the Invitation to Tender documents and should not be departed from

9.14.2 Procuring Officers in conjunction with Legal Services are responsible for finalising and agreeing the contract and its terms.

- 9.14.3 Procuring Officers must carry out appropriate due diligence checks to confirm the legal entity and identity of the Contractor. The Procuring Officer must check if the Contractor is a limited company (by way of a search of Companies House), a partnership; an individual; trust; association; charitable incorporated organisation or industrial and provident society.
- 9.14.4 The Procuring Officer must ensure, wherever possible, that the person signing the contract agreement for the other contracting party has authority to bind it.
- 9.14.5 Procuring Officers must obtain and retain evidence of the Contractor's insurance (which must be provided in accordance with Section 4.4 above) for the full duration of the contract and beyond if appropriate. Evidence of annual insurance must be obtained and retained on the procurement file together with any other annual certification requirements (e.g. annual certification for removal of asbestos)
- 9.14.6 The accepted tender must be attached to and form part of the contract agreement. Any clarifications, additional plans or project documents forming part of the contract must also be incorporated. The Procuring Officer must ensure that there are no conflicts between these documents.
- 9.14.7 Ordinary Contracts **must** be evidenced in writing. Advice and approval must be sought from Legal Services in circumstances where it is proposed to use a contractor's/supplier's own terms and conditions instead of the Council's General Terms and Conditions.
- 14.8 All Agreements relating to contracts, irrespective of value, shall clearly specify:
- 9.14.8.1 The full legal names and addresses of the parties – where the contractor/suppliers is a company, its registered office and company registration number should be stated.
  - 9.14.8.2 What is to be supplied (e.g. the works, materials, services, matters or things to be furnished, had or done) and when (e.g. where appropriate, the time, or times, within which the contract is to be performed)
  - 9.14.8.3 The provisions for payment (e.g. the price to be paid and when). The Procurement Regulations require the Council to pay undisputed

invoices within 30 days (subject to any contractual or statutory obligation to pay earlier), and the Contractor should be under an obligation to include in any subcontract awarded by the Contractor the same provisions, and ensure that such terms are passed down through the supply chain.

9.14.8.4 A termination clause in accordance with Section 4.10 of these Contract Procedure Rules

9.14.9 In addition contract documents relating to Ordinary Contracts shall also include provision for the following:

9.14.9.1 That all goods, services and works must comply with any relevant standards or specifications, code of practice, British Standard Specifications or Codes of Practice current at the date of the tender irrespective of whether or not such standards, specifications and codes of practice are specifically listed.

9.14.9.2 compliance with the Equality Act 2010.

9.14.9.3 Provision for liquidated damages where appropriate (based on advice from the Assistant Director - Legal and Governance). Provision for liquidated damages should only be included if such liquidated damages can be genuinely pre-estimated and agreed with the contractor/supplier.

9.14.9.4 that Contractors discharging Council functions comply with the duty of Best Value under the Local Government Act 1999 (as amended).

9.14.9.5 For contracts where the Council is performing the services: provision for the contractor to be responsible for the payment of interest in respect of late payment at the rate stated in the contract.

9.14.9.6 Where appropriate, the type and amount of security required e.g. a Performance Bond with a third party. The requirement for security will depend on an assessment of the risk associated with the contract or of the supplier. See Section 4.6

9.14.10 In every written contract for the execution of work or the supply of goods or services falling within the Ordinary Contracts level clauses relating to the following matters shall be inserted as a minimum (unless otherwise agreed with Legal Services):

- Termination and cancellation requirements
- Assignment and sub-letting requirements
- Insurance requirements
- Health and Safety requirements
- Data Protection and Data Security requirements
- Confidentiality requirements
- Equalities requirements
- Freedom of Information requirements
- TUPE requirements (where appropriate)
- Safeguarding requirements (where appropriate)
- Anti-Bribery and Corruption clauses
- Public Interest Disclosure (“Whistle Blowing”)
- Indemnity requirements
- Human Rights requirements
- Bankruptcy and Insolvency requirements
- Sustainability
- Governing law and jurisdiction
- Transparency requirements
- Disputes and Complaints procedure requirements
- Entire Agreement
- Rights of Third Parties
- Force Majeure
- Intellectual Property and Project Materials requirements

9.14.11 For examples of the appropriate wording to be used for each of the above clauses, Procuring Officers must contact Legal Services

9.14.12 Table 4 above shows the forms of contract used most widely for different types and values of procurement, where they can be located, who to contact for



advice, the authority required and summarises where completed contracts must be stored.

### **9.15 Letters of Intent:**

A Letter of Intent may be appropriate in circumstances where it is necessary to authorise a contractor to commence specific preparation works or purchases in advance of commencing works under formal contract arrangements. An improperly drafted Letter of Intent may lead to unintended content in a legally binding contract and care must always be taken to ensure that such letters are properly constructed and legal advice has been taken before such letters are issued.

Letters of Intent ahead of the formalisation of contract agreements may only be used in exceptional circumstances and only with the approval of the Assistant Director - Legal and Governance. **No Letter of Intent should be issued to a contractor or supplier without the Procuring Officer first seeking the advice and approval of Legal Services.**

As Letters of Intent are contracts they should be signed in accordance with the relevant Contract Procedure Rules relating to their value.

### **9.16 Finalising Ordinary Contract Documents:**

9.16.1 All Ordinary contracts may be signed by either the appropriate Chief Officer or Contracts Officer together with one other officer who has authority delegated to them by a Chief Officer (see section 3.1 of these Contract Procedure Rules).

9.16.2 Contracts in this category are not usually required to be executed under seal, but where a contract is high value, high risk and/or a long term contract, advice should be sought from Legal Services with regard to how a document should be executed.

9.16.3 **Except** after consultation with the Assistant Director - Legal and Governance, no contract for works, services or for the supply of goods shall commence until the

tendering/ordering procedures and contract documents have been completed in accordance with the Council's Financial Rules and these Contract Procedure Rules. Making payments under the terms of a contract prior to the satisfactory completion of the contract documents shall be a breach of these Contract Procedure Rules and may result in disciplinary action unless the use of a Letter of Intent has been authorised and is in place.

#### **9.17 Contract Variations/Extensions/Overspends:**

- 9.17.1 Officers must not enter into extensions, variations or overspends without the prior approval of the relevant Chief Officer or person with the appropriate level of authority delegated by the Chief Officer. Evidence of such approval must be recorded in writing.
- 9.17.2 If the original contract was not subject to Procurement Regulations, any extension must not take the total value of the contract above the Procurement Regulations Thresholds. No extension, variations or overspends that result in the value of the contract exceeding the Procurement Regulations Thresholds will be entered into (see Table 2). Legal advice must be obtained if the aggregate contract value is close to the Procurement Regulations Thresholds.
- 9.17.3 If the original contract was awarded as a framework contract, the total contract period, including any extensions, must not exceed four years.
- 9.17.4 Officers may extend or vary a contract provided that:
- 9.17.4.1 there is provision within the contract terms to extend it for a further period (and this has not already been utilised to its full extent);
  - 9.17.4.2 prior to any extension or variation being agreed the Procuring Officer must ensure that there is sufficient additional budget and has obtained confirmation in writing from the relevant budget holder;
  - 9.17.4.3 the Procurement Regulations Thresholds are not being exceeded;
  - 9.17.4.4 Best Value can be demonstrated;
  - 9.17.4.5 authority to extend or vary from the appropriate source has been recorded in writing;

9.17.4.6 the form of Deed of Variation has been approved by Legal Services.

9.17.5 If there is no provision within the contract terms for extensions or variations, then advice should be sought from Legal Services **before** proceeding further.

9.17.6 Variation Agreements relating to Ordinary contracts may be signed by either a relevant Chief Officer or Contracts Officer together with one other Officer who has had authority delegated to him/her by a Chief Officer and who also has the appropriate authority under the Council's financial rules to authorise the expenditure. If a variation involves expenditure that takes the overall value of a contract into the financial thresholds of a Major Contract, a Variation Agreement must be authorised and signed by the Assistant Director - Legal and Governance and one other officer who has had authority delegated to them by the Assistant Director - Legal and Governance. Where the variation results in additional costs, there must be sufficient budget available, approval must also be obtained from the budget holder, and if, over £50,000, the Section 151 officer.

## **9.18 Performance Monitoring:**

9.18.1 For each contract let by the Council, the relevant Chief Officers for their Service Area is responsible for ensuring that there is a named Officer in charge of the contract responsible for monitoring:

- contract performance and outcomes
- compliance with the contract specification and conditions
- risk management
- user satisfaction and complaints
- payments to the contractor including penalty and bonus payments
- costs
- value for money
- arrangements for re-letting
- continuous improvement

## **9.19 Record Keeping:**

- 9.19.1 Contracts that are signed under hand (not sealed), whether electronically or physically must be retained by each Service Area for a minimum of six years after the contract has expired.
- 9.19.2 Contracts that are sealed must be retained for a minimum of twelve years after the contract has expired.
- 9.19.3 Where the contract is externally funded any retention periods for documents specified in the grant conditions exceeding the Council's requirements must be followed.
- 9.19.4 Procuring Officers are responsible for ensuring that all records relating to tenders are kept for a minimum of two years including:
- all tenders received
  - notes of any telephone conversations with tenderers
  - notes of any meetings relating to selection and award criteria
  - information provided to tenderers
  - notes of any decisions made together with reasons

Please note that the successful tender documents must be retained for a minimum of six years

- 9.19.5 Contract Officers are responsible for notifying the Council's Procurement Team of completed contracts and for ensuring that it is added to the Council's Centralised Contract database

#### **Reminder:**

- **The Council is obliged to publish all items of expenditure on goods, services and works which exceed £500 in value. Prior to placing any order, Officers must consider whether the expenditure can be justified. Orders must not be artificially split with the intention of bringing the value of each order below £500, or to avoid a contract threshold, or order less than is actually required.**

The principles of **transparency, non-discrimination, equality and social value** are obligations that apply to all procurements and must be complied with at all times.

**Warning:**

- All contracts must be concluded formally in writing before the supply, service or construction work begins, or site access given or any expenditure commitment is made to ensure that the Council's position is protected. An award/acceptance of tender letter is insufficient. Making payments to a contractor or supplier before the contract is signed is a breach of these Contract Procedure Rules unless the use of a Letter of Intent has been authorised and is in place.
- Failure to comply with any of these Contract Procedure Rules may result in **disciplinary action and legal proceedings** against the Officer or third parties concerned.

## 10. Major Contracts (£170,000.00 and above

### Procurement Regulations Thresholds):

- (A) Procuring Officers should first ensure compliance with paragraphs 4.1 – 4.12 of these Contract Procedure Rules i.e. by identifying the need for the goods, services or works required; that there is authority to proceed to purchase the goods, services or works and that there is sufficient budget available.
- (B) Procuring Officers should satisfy themselves that they are able to address all issues appropriate to their procurement activity and should use the Procurement Checklist as a reminder of the matters that they should consider prior to undertaking any procurement activity. Where there is any doubt, Procuring Officers should consult with the Council's Legal Services Team or Procurement Team as appropriate.
- (C) Procuring Officers should consult with the Council's Procurement Team to ensure that the required goods, works or services are not available via any pre-existing contractual arrangements. If goods, works or services are not otherwise available then Officers should proceed as follows:
- (D) Procuring Officers **must** contact the Council's Procurement Team at the commencement of all procurement activities within this category to agree the appropriate procurement process which will ensure value for money and adequate competition and where applicable, compliance with Procurement Regulations and processes.
- (E) Careful consideration should be given to the details of the proposed arrangement where a procurement process is not proposed to be followed due to the proposed arrangement being with another local authority/ public body (see section 3.5 Procurement Exemptions).
- (F) The Council's Procurement Team **must** be contacted by Procuring Officers **before** commencing any above Procurement Regulations Threshold procurement activity. All above Procurement Regulations Threshold procurement must be managed by the Council's Procurement Team in conjunction with the Procuring Officers.

- (G) The tender process used for Major contracts, will be dependent upon the value of the contract to be let. If the value of the contract exceeds the Procurement Regulations Threshold there are currently different tender processes that may be adopted as set out in this section below. Procedures relating to contracts valued in excess of £170,000 *but below* the Procurement Regulations Thresholds should, subject to prior consultation with the Council's Procurement Team, follow those set out for Ordinary Contracts as set out in Section 9 of these Contract Procedure Rules.
- (H) **Procurements under the full regime of the Procurement Regulations can take at least 6-12 months to complete and Procuring Officers need to ensure that they set aside adequate time and resources to complete the process.**

## **10.1 Procurement Processes (Background summary):**

10.1.1 The Council is a 'Contracting Authority' under the Public Contract Regulations 2015 therefore the Regulations apply to the letting of contracts for the supply of goods, services and works. All procurements that meet the Procurement Regulations Threshold must follow the full procurement regime set out in the Procurement Regulations unless they are specifically excluded from the Regulations or the Light Touch Regime applies.

10.1.2 Current Procurement Regulations Thresholds are set out in Section 5.2.6 but are subject to review every two years, they can vary up or down from current levels. Advice must always be sought from the Council's Procurement Team as to the current Procurement Regulations Thresholds.

### **10.1.3 Full Procurement Regime**

When carrying out a procurement that falls with the Procurement Regulations and is in excess of the value of the relevant Procurement Regulations Threshold, the Council must use one of the following procurement procedures:

- The 

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[open procedure](#).
- The 

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[restricted procedure](#).

- The 

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[competitive dialogue procedure](#).
- The 

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[competitive procedure with negotiation](#).
- An 

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[innovation partnership](#).

The negotiated procedure without prior publication of a contract notice is also available in limited circumstances

The Council's Procurement Team can advise in detail on the application of these processes and which is the most appropriate to be used.

#### 10.1.4 Light Touch Regime for Schedule 3 Services:

Schedule 3 lists services such as health, social and related services (including supply of domestic help and nursing or medical personnel); administrative social, educational, healthcare and cultural services; certain Legal services; provision of services to the community.

Under the Procurement Regulations, where the services being procured are listed in Schedule 3 and their total value exceeds the applicable threshold for Schedule 3 Services, the Light Touch Regime will apply. The main procedural rules of the light touch regime are set out in regulations 74 to 76 of the Procurement Regulations (although other parts of the Regulations are still relevant) and set out requirements for advertising contracts, award procedures (which must be transparent and ensure equal treatment of bidders) and publishing contract award notifications. The Council's Procurement Team will be able to advise Procuring Officers on whether a purchase is categorised as works, goods or services under Schedule 3 of the Procurement Regulations.

Procuring Officers **must** consult with the Council's Procurement Team and Legal Services as to whether or not a procurement exercise falls under the Light Touch Regime. Wherever possible Schedule 3 Service procurements should be run in line with the full regime to achieve the Council's aims. The Council recognises that this may not always be possible or appropriate and Procuring Officers should take advice from the Council's Procurement Team.



## **Explanatory Note on Contracts for Care Services**

Contracts for residential care, nursing care and contracts for those services provided by the Council pursuant to their statutory functions in providing and health and social care services to service users pursuant the Care Act 2014, the Children Act 1989 or in exercise of the client's right to choose are not required to be subject to the competitive (i.e. tendering element) of these Contract Rules, however such services need to comply with the requirements of the Procurement Regulations when the value of the contract to be let meets the relevant Procurement Regulations Threshold.

**The definition of a Major contract in respect of a contract made pursuant to the above legislation is a contract valued at £500,000 or above.**

### **10.2 Remedies for breach of the Procurement Regulations**

10.2.1 The consequences for breaches of the Procurement Regulations for over

Procurement Regulations Threshold procurement are significant and include:

- 10.2.1.1 the contract is declared void where entered into in breach of the regulations
- 10.2.1.2 financial penalties
- 10.2.1.3 awards of damages and costs to successful challengers
- 10.2.1.4 compensation to the contractor for repudiatory breach of contract
- 10.2.1.5 costs of delays in provision of the required goods/services/works
- 10.2.1.6 costs of further procurement

**Compliance with the Procurement Regulations processes by Procuring Officers is therefore essential and compulsory.**

### **10.3 Abandonment**

10.3.1 Procuring Officers **must** obtain advice from the Council's Procurement Team and/or Legal Services **before** abandoning or recommencing a procurement under the Procurement Regulations.

## **10.4 Contract Opportunity Publication:**

- 10.4.1 All contracts to be let above the relevant Procurement Regulations Threshold must be advertised by the publication of a Contract Notice on the 'Find A Tender' e-notification service. Under no circumstances must a public notice appear in any form before publication on 'Find A Tender' and neither should any other advertisement contain any more information than that published on 'Find A Tender'.
- 10.4.2 Procuring Officers must not use Approved Supplier lists to avoid the need for advertising for tenderers for above Procurement Regulations Threshold procurements.
- 10.4.3 The Council's Procurement Team are responsible for drafting the advert with the assistance of the Procuring Officer. The advert must express the nature and purpose of the procurement exercise and state where further details may be obtained.
- 10.4.4 The Council's Procurement Team are responsible for placing the advert and ensuring that the relevant timescales are complied with. Detailed advice as to the procedures to be followed with regard to adverts must be obtained by the Procuring Officer from the Council's Procurement Team.

## **10.5 Procurement Processes:**

### **Open Tendering:**

- 10.5.1 Under Open Tendering, Procuring Officers must send Invitations to Tender to **all** those persons who respond to the published Contract Notice and who meet the requirements stated in the Contract Opportunity Publication.

### **Restricted Tendering:**

- 10.5.2 Under Restricted Tendering, Procuring Officers need only send Invitations to Tender to:
- 10.5.2(i) not less than five of the persons who respond to the published Contract Notice and submit the Pre-Qualification Questionnaire

(PQQ) who best meet the short-listing methodology agreed prior to the issue of the PQQ referred to below. See further guidance on PQQs in the Guidance Notes published by the Procurement Team on the Council's website and intranet pages relating to procurement.

- 10.5.2(ii) If fewer contractors/suppliers meet the selection criteria set at the PQQ stage, Procuring Officers should consider whether continuing with the process will achieve genuine competition, value for money and quality and whether or not a further advertisement may be required. Procuring Officers should seek the advice of the Council's Procurement Team on this point if it should arise.
- 10.5.2(iii) The shortlisting criteria and process must be prepared (in consultation with the Council's Procurement Team) in advance of the issue of the PQQ and a copy retained on file.
- 10.5.2(iv) All persons that do not qualify for inclusion on the shortlist to receive an Invitation to Tender must receive notice that they have been excluded from the tender process. Any person requesting in writing the reasons why they were unsuccessful shall be informed by the Procuring Officer of the reasons for the Council's decision.

#### **10.5.4 The Competitive Dialogue Procedure or the Competitive Procedure with Negotiation must only be used with the prior approval of the Chief Financial Officer**

##### **Competitive Dialogue Procedure:**

##### **10.5.4 Under the Competitive Dialogue Procedure:**

- 10.5.4(i) interested parties may submit an expression of interest to the Contract Notice which is then subject to a short-listing exercise using a PQQ;
- 10.5.4(ii) If fewer contractors/suppliers meet the selection criteria set at the PQQ stage, Procuring Officers should consider whether continuing with the process will achieve genuine competition (there should be a minimum of

two bidders), value for money and quality and whether or not a further advertisement may be required.

10.5.4.(iii) The Council then enters into a dialogue with bidders to develop one or more suitable solutions to meet its needs.

10.5.5 Under the Competitive Procedure with Negotiation:

10.5.5 (i) interested parties may submit an expression of interest to the Contract Notice which is then subject to a short-listing exercise using a Selection Questionnaire (SQ) or equivalent;

10.5.5 (ii) Shortlisted bidders are then sent the Invitation to Tender and are invited to submit an initial tender;

10.5.5(iii) Following evaluation of the initial tender, subject to what rights the Council has reserved in respect of the process in the Contract Notice or ITT, the Council may:

- accept the initial tender and award the contract on the basis of the initial tender; or
- Carry out further down-selection of tenderers or
- Carry out negotiations with the remaining tenderers to improve the content of their tenders.

When the Council intends to conclude negotiations, it informs all remaining tenderers of the deadline to submit any new or revised tenders, then final tenders are submitted and evaluated and the contract is awarded.

## **10.6 Specification:**

See Section 9.1 with regard to the Specification requirements

## **10.7 Evaluation Criteria:**

See Section 9.2 with regard to the Evaluation Criteria requirements

## **10.8 Invitations to Tender (ITT):**

See Section 9.3 with regard to the procedures to be followed with respect to the issue of ITTs noting that for an above Procurement Regulations Threshold tender process the Procurement Regulations require full electronic access to the procurement documents to be provided free of charge therefore the Council's electronic tendering system should be used. **Please note** the Reminder with respect to the return of Invitations to Tender. With respect to Major Contracts, Procuring Officers **must** request Internal Audit to undertake financial checks on the financial status of tenderers in all circumstances prior to proceeding to accept any tender received.

#### **10.9 Receipt and Opening of Tenders (where Tenders are submitted in hard copy format):**

See Section 9.4 with regard to the procedures to be followed with respect to the receipt and opening of tenders in hard copy format noting that for an above Procurement Regulations Threshold tender process the Procurement Regulations require full electronic access to the procurement documents to be provided free of charge therefore the Council's electronic tendering system should be used .

#### **10.10 Receipt and Opening of Tenders (Electronic Format):**

See Sections 9.5 and 9.8 with regard to the procedures to be followed with respect to the receipt and opening of tenders in electronic format.

#### **10.11 Extending the Tender Deadline and Late Tenders:**

See Section 9.6 with regard to the procedures to be followed with respect to the late tenders.

#### **10.12 Irregular Tenders:**

See Section 9.7 with regard to the procedures to be followed with respect to irregular tenders.

#### **10.13 Electronic Tendering Processes:**

See Section 9.8 with regard to the procedures to be followed with regard to Electronic Tendering Processes

#### **10.14 Electronic Auctions:**

See Section 9.9 with regard to the procedures to be followed with respect to Electronic Auctions.

#### **10.15 Errors or discrepancies in tenders:**

See Section 9.10 with regard to the procedures to be followed with respect to errors or discrepancies in tenders.

#### **10.16 Discussions and Post Tender Negotiations:**

See Section 9.11 with regard to the procedures to be followed with respect to discussions and post tender negotiations.

#### **10.17 Acceptance of Tenders:**

See Section 9.12 with regard to the procedures to be followed with respect to the acceptance of tenders.

#### **10.18 Notification of Contract Award:**

- 10.18.1 See Section 9.13 with regard to the procedures to be followed with regard to the notification of contract award.
- 10.18.2 where the Estimated Value is equal to or above the appropriate Procurement Regulations Thresholds, including where the procurement exercise relates to a Schedule 3 Service, notification of the contract award shall be sent to all tenderers in accordance with the Procurement Regulations to include the following details (as required by the Procurement Regulations):
- (i) the criteria for the award
  - (ii) the name of the successful tenderer
  - (iii) the successful tenderer's score;
  - (iv) the score (if any) of the Person receiving the notice;

- (v) the reasons for the decision, including the characteristics and relative advantages of the successful tenderer's tender; and
- (vi) the date when the standstill period required in accordance with Section 10.19 below shall expire and the date before which the Council will not enter into a contract with the successful tenderer.

10.18.3 The Council's Procurement Team shall ensure that a contract award notice is placed on the appropriate websites as soon as possible but within 30 days of the contract award.

### **10.19 Standstill Period:**

A period of 15 days must elapse between the date of dispatch of the notification of contract award letter and the date upon which the Council enters into a contract. Any tenderer requesting in writing the reasons why they were unsuccessful shall be informed by the Procuring Officer of the reasons for the Council's decision. This information must be supplied at least three working days prior to the expiry of the 15 day period or that period must be extended to allow at least three working days between the provision of the information and the date upon which the Council enters into a contract. Where the end of the 15 day period is not a working day, the period should be extended to midnight at the end of the next working day. The 15 day period may be reduced to 10 days where the notification of contract award letter is issued exclusively by electronic means.

### **10.20 Debrief of unsuccessful contractors**

- 10.20.1 If requested by an unsuccessful tenderer the Council's Procurement Team will provide a further debrief to unsuccessful tenderers.
- 10.20.2 The Council's Procurement Team will refer all potential challenges relating to a contract award to Legal Services.
- 10.20.3 If a complaint is received with regard to a contract award an **automatic suspension period** (in addition to the standstill period) **will apply**. The contract will not be concluded within 10 days of the response to the formal complaint being issued. Review by an independent body may be required.

The contract must not be awarded pending the outcome of a formal review. Chief Officers, Procuring Officers and the Council's Procurement Team must seek Legal Services' advice on the response to the complaint and on the application of the suspension period.

#### **10.21 Form of Contract:**

See Section 9.14 with regard to the procedures to be followed with respect to the form of contract.

#### **10.22 Finalising Major Contract Documents:**

All Major contracts must either be:

- 10.22.1 signed by the Chief Executive or the Assistant Director - Legal and Governance together with one other Officer who has had authority delegated to them by the Chief Executive or Assistant Director - Legal and Governance (see section 3.1 of these Contract Procedure Rules); or
- 10.22.2 sealed with the Council's Common Seal (whether physically or electronically in accordance with the Council's Constitution) duly witnessed by an Officer authorised to do so.

#### **10.23 Contract Variations/Extensions/Overspends:**

- 10.23.1 See Section 9.17 with regard to the procedures to be followed with respect to contract variations and extensions.
- 10.23.2 In the case of contracts tendered in accordance with Procurement Regulations, any extension will only be permissible if this was properly described and provided for in the original Contract Notice
- 10.23.3 If the original contract was not subject to Procurement Regulations, any extension must not take the total value of the contract above the Procurement Regulations Thresholds.
- 10.23.4 If the original contract was awarded as a framework contract, the total contract period, including any extensions, must not exceed four years.



10.23.5 Any variation or extension (outside of existing agreed terms) to an existing Major contract should be signed by the Chief Executive or the Assistant Director - Legal and Governance together with one other officer who has delegated authority from the Chief Executive or Assistant Director - Legal and Governance

#### **10.24 Performance Monitoring:**

See Section 9.18 with regard to the procedures to be followed with respect to Performance monitoring.

#### **10.25 Record Keeping:**

See Section 9.19 with regard to the procedures to be followed with regard to record keeping.

#### **10.26 Letters of Intent:**

A Letter of Intent may be appropriate in circumstances where it is necessary to authorise a contractor to commence specific preparation works or purchases in advance of commencing works under formal contract arrangements. An improperly drafted Letter of Intent may lead to unintended content in a legally binding contract and care must always be taken to ensure that such letters are properly constructed and legal advice has been taken before such letters are issued.

Letters of Intent ahead of the formalisation of contract agreements may only be used in exceptional circumstances and only with the approval of the Assistant Director - Legal and Governance. **No Letter of Intent should be issued to a contractor or supplier without the Procuring Officer first seeking the advice and approval of Legal Services.**

As Letters of Intent are contracts they should be signed in accordance with the relevant Contract Procedure Rules relating to their value.

**Reminder:**

- In the case of **ALL Major Contract** procurements, Procuring Officers should seek the advice of the Council's Procurement Team and where appropriate, Legal Services **BEFORE** the commencement of any procurement activity in this category.
- In the case of **ALL Major Contracts** that are above the Procurement Regulations Threshold of the Procurement Regulations, Procuring Officers **MUST** ensure compliance with the Procurement Regulations at all times to ensure that the Council's position is protected. Failure to do so may have serious repercussions for the Council and disciplinary action may follow.
- The Council is obliged to publish all items of expenditure on goods, services and works which exceed £500 in value. Prior to placing any order, Officers must consider whether the expenditure can be justified. Orders must not be artificially split with the intention of bringing the value of each order below £500, or to avoid a contract threshold, or order less than is actually required.
- The principles of **transparency, non-discrimination, equality and social value** are obligations that apply to all procurements and must be complied with at all times.

**Warning:**

- All contracts **MUST** be concluded formally in writing before the supply, service or construction work begins, or site access given or any expenditure commitment is made to ensure that the Council's position is

**protected. An award/acceptance of tender letter is insufficient. Making payments to a contractor or supplier before the contract is signed is a breach of these Contract Procedure Rules unless the use of a Letter of Intent has been authorised and is in place.**

- Failure to comply with any of these Contract Procedure Rules may result in **disciplinary action and legal proceedings** against the Officer or third parties concerned.

## **11. Contracts Relating to the Sale of Council Goods or Assets (Other than Council Land and Buildings)**

**Please note: with regard to this Section 11, the Contract Procedure Rules should be read in conjunction with the Council's Financial Rules**

- 11.1 When selling Council goods or assets Officers must comply with the aims of these Contract Procedure Rules, specifically the need to achieve best value, ensure transparency, openness, non-discrimination, probity and accountability.
- 11.2 Chief Officers are expected to have policies in place for the effective disposal of surplus assets. These policies must be referred to when selling surplus assets. Officers should make enquires of the Chief Financial Officer to satisfy themselves of the authorities required for write-offs and take account of any requirements of the Council's Financial Rules in respect of disposal of assets.
- 11.3 Appropriate authority under the relevant scheme of delegation for the sale must be evidenced in writing before commencing the sale process.
- 11.4 The table below sets out the minimum measures Officers must take to ensure that sales achieve best value.

Sale with value of under £10,000	Sale with value £10,00 to £50,000	Sale with value over £50,000
<p>Seek a minimum of 3 offers wherever possible. Use sealed bid process or auction.</p> <p>Standard Terms and Conditions for Sale of Goods and Services available from Legal Services</p>	<p>The Council's Procurement Team can provide advice on the need to advertise to achieve an appropriate level of interest</p> <p>Contact Legal Services for advice concerning terms of sale</p>	<p>Advertise sale appropriately further to obtaining advice from the Council's Procurement Team</p> <p>Contact Legal Services for terms of sale</p>

- 11.5 The Council's Procurement Team can advise Officers on compliance regarding asset sales if required.

## **12 Contracts where the Council is the Supplier:**

- 12.1 These Contract Procedure Rules also apply if the Council is supplying goods, work or services.
- 12.2 **Before** proceeding to tender for a contract under this Section, Officers must ensure that the following conditions are met:
- 12.2.1 The Assistant Director - Legal and Governance **must** confirm that the Council can legally enter into a contract in accordance with its statutory powers **before** the Council submits a tender.
- 12.2.2 The Director of Finance, Governance and Assurance **must** be satisfied that the Council's bid is both financially viable and financially beneficial to the Council.

12.2.3 The Council has sufficient insurance to cover any liability it may have under the proposed contract. Officers should seek advice from the Council's Risk and Insurance Officer in this regard.

12.2.4 Assistant Director - Legal and Governance must approve the terms and conditions of any proposed contract.

12.2.5 All contracts where the Council is the supplier must be signed by the Assistant Director - Legal and Governance together with one other Officer who has authority delegated to them by the Chief Executive or Assistant Director - Legal and Governance.

**12.3** Chief Officers must keep a list of all Ordinary and Major supply contracts and a list of any unsuccessful bids. Chief Officers must ensure that a record of the details of **all** supply contracts is maintained.

## 13. Miscellaneous Procurement Issues:

In addition to the matters referred to in Sections 1-11 above, Officers must also consider whether a procurement exercise may in any way be affected by any of the following procurement related issues:

### 13.1 Subsidy Control (State Aid)

13.1.1 Subsidy Control (State Aid) is financial aid provided from public funds in whatever form which could distort competition and affect trade by favouring certain organisations. Subsidy Control (State Aid) is generally **prohibited** unless it falls within certain permitted forms of subsidy support

13.1.2 With effect from 31<sup>st</sup> December 2020, European State Aid rules were disappplied in the UK. From 1<sup>st</sup> January 2021, the UK's own domestic subsidy control regime sets out that the UK will follow World Trade Organisation (WTO) subsidy rules and adhere to any international obligations on subsidies agreed under free trade agreements, including those in the subsidies chapter of the UK-EU Trade and Co-operation Agreement. The Department for Business, Energy and Industrial Strategy (BEIS) has published guidance for public authorities on WTO rules on subsidies, and subsidy control commitments in other international commitments and free trade agreements.

13.1.3 The BEIS provides guidance to help public authorities understand how they can award subsidies that are compliant with the WTO rules and the UK's Free Trade Agreements, including with the European Union. The guidance states that, in simple terms, there are four key characteristics of a support measure that are likely to indicate that it would be considered a subsidy

13.1.4 The four key characteristics of a support measure that are likely to indicate that it would be considered a subsidy:

- a subsidy must constitute a financial (or in kind) contribution such as a grant, loan or guarantee;
- the financial contribution must be provided by a "public authority", including, but not limited to, central, devolved, regional or local government;
- the award of the subsidy must confer a benefit on the recipient in the sense of an economic advantage that is not available on market terms; and
- the subsidy must cause a distortion in or harm to competition, trade or investment.

13.1.5 Whether the subsidy is being given to support a good or a service will determine which of the WTO or Free Trade agreements need to be considered, and it will also need to be considered whether the subsidy could impact trade with another country or trade and investment between the UK and EU.

13.1.6 Examples of a contribution to an enterprise are grants, loans at below market rate, or a loan guarantee at below market rate or allowing a company to use publicly owned office space rent free. An enterprise is anyone who puts goods or services on a market. An enterprise could be a government department or a charity if they are acting commercially.

13.1.7 Procuring Officers **must** seek further advice from the Director of Finance, Governance and Assurance and the Assistant Director - Legal and Governance whenever there is the slightest possibility that a subsidy is being provided to an organisation and subsidy control rules may apply.

13.1.8 When formulating proposals to grant aid to a third party or enter into contractual arrangements using public funds Officers must consider whether the funding may amount to the provision of a subsidy .

## **13.2 Development Agreements:**

13.2.1 Land and property transactions are not subject to these Contract Procedure Rules, **however** there are certain instances where Officers should beware of

falling foul of the Procurement regulations where there may be circumstances in which the Council finds itself entering into “development agreements”.

13.2.2 There is no specific definition of a development agreement but, in the widest sense, it can mean any agreement between a contracting authority and a third party about the use or development of land or property. For example pursuant to an agreement made under Section 106 of the Town and Country Planning Act 1990 or further to the exercise of compulsory purchase powers or in certain leasing arrangements. There are a number of factors which might determine whether or not the Procurement regulations apply to an agreement relating to the development of or disposal of land and property which are as follows:

- (i) Is there to be work or works required or specified by the Council?
- (ii) Is there an enforceable obligation (in writing) upon a Contractor to carry out the work or works required or specified by the Council?
- (iii) Is there some pecuniary interest for carrying out the specified or required works (this does not necessarily have to be a cash payment)?

If the answer to all of the above is “yes”, it is likely that a development agreement will be subject to the public procurement rules and Officers should seek advice from Legal Services before proceeding any further.

13.2.3 In addition to the above, if the Council is granted the right to exploit work or works under a development agreement, Officers should seek advice from Legal Services as to whether or not a public works concession contract arises.

## **13.3 Grants**

### **13.3.1 Grant Funding**

As a general rule the provision of grant funding by the Council to an organisation will fall outside the scope of the Contract Rules, although proper procedures regarding the provision of funding should still be followed and adequate documentation completed to ensure that monies or assets are properly applied, accounted for and not misused. The granting of an asset should be treated in exactly the same way as if it were cash funding.



Grant funding may come directly from the council or from external sources (i.e. where the Council is acting as the Administering Authority/Accountable Body). Where the funding is received from an outside organisation, regard should be had to any conditions or obligations imposed on the Council that may also need to be imposed on any recipient of the funding in order to protect the Council.

### **13.3.2 Guidance on the distinction between procurement and grant funding**

13.3.2.1 The majority of contracts (with the exception of those that are exempted under these Rules) are required to be entered into following a contract procurement process.

Contracts that are procured are generally for those functions that the Council is under a duty to provide or to achieve best value for money. They shall be competitively procured under Council's Contract Procedure Rules by either obtaining quotes or inviting tenders.

Grant funding may be appropriate instead of procurement to provide support for services or projects that meet our strategic objectives and are of benefit to the community where the key measure is delivery of the project itself, for example assistance to purchase IT equipment for a community facility or financial support for running a community event. Grants should be used when there is a genuine need for targeted funding, for instance to support the development of a market for services which could subsequently be secured through a contract. Grants can also be used to stimulate new developments, putting in early stage funding to help an organisation develop; this can be particularly useful where Council funding helps secure other funding for an organisation. Consideration should always be given to whether the grant funding opportunity should be open to competition and to any Subsidy Control (State Aid) issues referred to in Section 13.1.

**Grant funding should not be used as a method of avoiding the competitive process or these Contract Rules, to do so will constitute a breach of Contract Rules and may result in disciplinary action.**

13.3.2.2 When funding services provided by outside organisations, Officers must consider the most appropriate means of securing the desired outcomes and decide which of the following applies;

- (a) Is the Council making a contribution to an outside body – for example, to assist with general expenses or to fund a specific project or services?
- (b) Is the Council investing in the voluntary, community and faith sector or in social enterprises to build capacity or deliver services? or
- (c) Is the Council buying services from outside organisations to enable it to deliver services as part of the Council's business?

13.3.2.3 Funding which falls within 13.3.2.2 (a) will be most appropriately dealt with by way of a grant process.

13.3.2.4 Funding that falls within 13.3.2.2 (b) could be dealt with by either a grant or a competitive procurement process. Officers should seek the advice of the Director of Finance, Governance and Assurance about the Council's approach to funding under such circumstances.

13.3.2.5 Funding which falls within 13.3.2.4 (c) will most appropriately be dealt with by way of a competitive procurement process in accordance with the Council's Contract Procedure Rules. Officers should seek the advice of the Procurement Manager as to the best means of procurement. Consideration should be given as to how to encourage the voluntary, community and faith sector to compete for services effectively.

### **13.3.3 Grant Funding Guardian**

The Council has established a Grant Funding Guardian to monitor the grant process with respect to voluntary and community sector grants. The Grant Funding Guardian is made up of a senior Officer of the Council, an elected Member of the Council and a representative from the Voluntary and Community Sector Assembly. All new grant applications, or renewal applications must be submitted to the Grant Funding Guardian for approval as a grant. Detailed

procedures relating to the Grant Funding Guardian and its role is available from the Procurement Team

#### **13.3.4 Grant funding provided to Organisations**

Where grant funding is provided by the Council Officers must ensure that a written funding agreement is put in place. The format and detail of the agreement will depend on the nature and purpose of the grant, but the Council's mandatory contract terms as referred to in Section 9.14.2 should be included together with expected outcomes. Reference should also be made to the Voluntary and Community Sector Compact for further guidance. Where the value of such grant funding exceeds £50,000 a record of such grants must be retained within the relevant Service Area (this will also apply to the provision of assets in addition to money. Officers have a duty to protect the Council's interests by the completion of written agreements).

Any grant funding agreement should be authorised and signed by an Officer with the necessary authority for the relevant budget and with delegated powers under the relevant Service Area delegations:

<b>Value of grant given by the Council</b>	<b>Authorised Signatory</b>
Under £1,000	A signatory with authority to authorise this level of expenditure under the Council's financial systems
£1,000 - £50,000	A signatory with authority to authorise expenditure to this level under the Council's financial systems or with delegated authority given to them to authorise this level of expenditure by a Chief Officer or Budget Holder
£50,000 +	Chief Officer or Budget Holder

### **13.3.5 Funding Conditions**

Where funding for outside bodies is provided by third parties, for example Central Government, Officers must ensure that the funding is used in a way that complies with any conditions attached by the funder.

**Please Note: Grant funding should not be used as a method of avoiding the competitive process or these Contract Procedure Rules**

### **13.4 Highways Contracts:**

The Council has let a term contract for highways works in accordance with these Contract Procedure Rules. The term contract provides for:

13.4.1 All individual highway schemes up to a value of £150,000 are to be carried out by the term contractor.

13.4.2 For Highways contracts valued at £150,000 or more the following procedures should be followed:

- A design brief prepared by the Council's Highways and Transport client Officers and approved by relevant Chief Officer or supervising officer within that Service Area.
- A Brief should be forwarded to external consultants, normally the Council's term consultant, with a request to provide a target sum estimate for their work.
- A target sum shall be approved, or approved subject to amendment as agreed between both parties, if applicable, or rejected
- Subject to the above, an order shall be issued to consultants to carry out design, prepare tender documentation and invite tenders.
- Consultants, in accordance with Section 5.7 above shall be provided with a copy of the Council's Contract Procedure Rules to ensure that the Council's contractual requirements are met
- The design and procurement details will be discussed and agreed with Procuring Officers.

13.4.3 For the purposes of Highways contracts valued in excess of £150,000, the definition of a Major contract shall be a contract valued at £250,000 or above and the procedures for Major contracts with respect to Highways contracts only (but not Highways contracts exceeding Procurement Regulations Thresholds) shall be varied as follows:

- A list of tenderers shall be agreed (aiming to invite four to six tenderers) and selected utilising any Approved List or Council established or accessible framework arrangement.
- Consultants shall send tender documents to selected contractors.
- Consultants shall deal with all tender enquiries referring where necessary to client/Procuring Officers.
- Tenders shall be returned and opened in accordance with Section 9.4 or Section 9.5 depending on the nature of the tender process
- Consultants may deal with tenders in accordance with the following process:  
A tender may be amended after it has been received and before it has been accepted only in order to correct an arithmetical error or other discrepancy made in good faith subject to:
  - the tenderer shall be given details of the error or discrepancy found during the examination of the tender and shall be given the opportunity of confirming the tender without amendment or withdrawing the tender; or
  - amending the tender to correct genuine arithmetic errors provided that in this case, apart from these arithmetic errors, no other adjustment, revision or qualification is permitted. In this case written confirmation should be requested from the tenderer as to the error or discrepancy and confirming what the corrected entry should be.
- A written note of discussions with a tenderer must be made by Procuring Officers to record the suspected error, date, time, detail

of the discussion and any agreement reached and retained on file for audit purposes.

- Where the Council or its agents have made an error in the tender specification, the details of the error must be documented and advice sought from the Procurement Manager as to what course of action should be taken e.g. abandon and retender, communicate error and ask for revised prices or remove item from the evaluation (if only minor impact on the evaluation). The agreed course of action must then be approved by the Assistant Director - Legal and Governance.
- Consultants shall prepare a tender evaluation report to the Procuring Officer.
- Recommendations shall be passed to the relevant Chief Officer (or authorised officer with delegated authority) for approval.
- The Acceptance Letter shall be sent to the successful contractor by the Procuring Officer - **Note important information: Procuring Officers must take note of the guidelines referred to in Section 9.13.2 with regard to the care to be taken when sending Acceptance Letters**
- Consultants shall be responsible for advising and debriefing (where required) unsuccessful tenderers.
- The signed Tender return form shall be returned to the Procuring Officer.

## **APPOINTING EXPERTS AND CONSULTANTS**

### **1. Introduction**

There is often confusion about the status of people we ‘employ’ as experts or consultants and whether they are under a ‘**contract for services**’ (as an independent contractor) **or** a ‘**contract of service**’ (as our employee).

It is often thought that costs for national insurance and pension contributions can be avoided by hiring people as self-employed consultants. This is not necessarily the case as the terms and conditions of our contract with them will govern their employment status.

### **2. Employment Status**

Employment status is not a matter of choice. You cannot simply decide to treat working arrangements as employment or self-employment. It depends on the work to be done.

If someone is taken on under a ‘contract **of** service’ they are an employee and must be paid through Payroll.

If someone is taken on under a ‘contract **for** services’ they are self-employed and paid through Creditor Payments.

Sometimes it is a little more difficult. If you are not sure of someone’s employment status, please let Payroll have the full details. They will get a ruling from the local Tax Office.

The person you are taking on may suffer cashflow problems if we treat them as an employee, but they will always have their tax affairs in order at year end and there is no chance that we will suffer penalties for treating their status incorrectly.

### **3. What should we do to treat Experts and Consultants correctly?**

- Make sure everyone in your Service Area who takes on or pays people knows the rules and that you have routines to monitor the situation.
- Tell people the tax arrangements before you hire them.
- Do not pay anyone for work done out of petty cash or Creditor Payments unless it is to refund their costs. For example, if a member of staff paints a chair and you pay them £20 for doing the job plus paint, they should pay tax in the usual way unless they are a contractor.
- If possible agree terms and all arrangements to pay people in writing.
- If you are considering hiring someone under a 'contract for service':
  - make sure they have a properly set-up business which provides the services you need;
  - make sure that they have appropriate insurances and levels of insurance cover in place
  - follow the Financial Rules and Contract Rules for quotations and for work to be done;
  - make sure you have a proper contract or written arrangement which sets out details of the work, performance and payment; and
  - if you are in any doubt, contact Payroll.



#### **4. Common Mistakes**

- *Anyone who receives a one-off payment for wages, tips and so on must report it to the Inland Revenue*

This is not so. As employer or payer, we have to deal with the payments properly and pay tax and national insurance on them. We cannot rely on the individual giving the information to the Inland Revenue.

- *Mr Smith is self-employed but works for us so we can pay in cash without tax or national insurance being taken off*

How we treat this depends on the work done. If the work done is not one of the services Mr Smith normally provides in his self-employed business, treat him as an employee under PAYE.

Mr Smith can get a form RD 950 from the Contribution Agency and an NT Code from the Tax Office. But we must still pay his national insurance and we must pay him through Payroll.

- *Mrs Jones used to be our employee and we have re-engaged her as a consultant so we can pay her without tax or national insurance being taken off.*

Unless Mrs Jones has properly set up a business as a consultant providing the services you need, you must treat her as an employee and pay her through Payroll. You may also need to review her pension payment.

#### **5. Helpful Hints**

- Contracts of service are normally charged to pay codes as the individuals are classed as employees.

- Contracts for services are normally charged to supplies and services. If you had engaged a firm to do the work, this is where you would have charged their costs.
- Do not consider paying anyone for work done through Creditor Payments unless:
  - they have been hired under a contract for services;
  - the services they have provided are a normal part of their self-employed business; **and** you have checked their tax arrangements.
- If you make any payment to someone which is more than their costs in performing a task, the Inland Revenue must be made aware of that payment through Payroll or through their business accounts. We are responsible for treating the payment correctly.
- Make sure the Creditor Payments indicator is set up for construction industry arrangements.
- If you are paying a business for supplying temporary staff, pay through Creditor Payments. You are paying the business not the individual.

### Employment Status Checklist

Please complete all boxes in the first two columns using the following key:-

**Y=Yes, N=No, P=Partially Applicable**

& indicate what work was carried out in 'work carried out' box

#### EMPLOYEE

Has the work been done previously by,  
or would normally be done by an  
employee ☐ \*\*\*\*

Are payments based on number of;  
hours, sessions, days ☐ \*\*\*\*

Does someone employed by Shropshire  
Council tell them when or how to do the  
work ☐

Must the work only be done by them  
and no one else ☐

The work has to be done at set times ☐

Work is carried out on Shropshire  
Council premises ☐

#### SELF EMPLOYED

Does the person hold their own  
insurance for public liability ☐

A set fee agreed with risk of losing their  
own money if time/expenses are over  
original estimate ☐

They are not supervised by an  
Shropshire Council employee ☐

They can hire someone else to do the  
work on their behalf ☐

Can they organise their own work within  
final deadlines ☐

Do they provide their own equipment ☐

#### THE WORK CARRIED OUT

\*\*\*\* If you have indicated "Y" or "P" in either box the individual must be an employee

**EMPLOYEE**

☐

**SELF EMPLOYED**

☐

Completed By:

Date:

**Failure to complete this form correctly will result in it being returned & ultimately delay payment.**

*If you need any advice in completing this form, please contact Caroline Jones: (01743) 252185 or [caroline.jones@shropshire.gov.uk](mailto:caroline.jones@shropshire.gov.uk)*