

Contract Procedure Rules

1. Introduction

1.1 These Contract Procedure Rules apply to all purchases of works, goods and services by the Council. Their observance is mandatory. The object of these Rules are as follows:

- a) To ensure that the Council's procurement activity is fair, open, transparent, non-discriminatory and lawful;
- b) To protect the Council, Councillors and Officers from the risk of challenge, undue criticism or allegations of wrongdoing;
- c) To assist officers in achieving best practice and lawful procurement; and
- d) To ensure the Council fulfils its duty of delivering Best Value for its Council Tax Payers and excellent outcomes for its Customers.

1.2 The expectation is of compliance to these Rules, and in any cases of doubt, advice must be sought from the Head of Performance and Governance. The administration, monitoring and governance of the application of these Rules shall be the responsibility of the Head of Performance and Government.

1.3 If there is any relevant change to English or European Law which affects these Rules, then that change must be observed until these Rules can be revised. Where there is a difference between these Rules and the current legislation, the legislation will prevail.

2. Application

2.1 These Rules apply to:

- a) All contracts for the supply of works, goods or services to the Council;
- b) Partnership and collaborative arrangements with other Local Authorities where the Council is not the Lead Authority. Assurance is to be sought that the Lead Authority is acting in compliance with its own Contract Procedure Rules; and
- c) Concession Contracts.

2.2 These Rules do not apply to:

- a) Contracts solely for the acquisition, disposal or transfer of any interest in land; or
- b) Contracts of employment for the appointment of individual members of staff.

Exemptions to These Rules

2.3. The expectation is that these Procedure Rules will be observed. However, an exemption to the requirements of Contract Procedure Rules 15, 19, 20, 21 and 22 may be sought where one or more of the following circumstances apply:

- a) Goods or materials are proprietary items or are sold only at a fixed price and no satisfactory alternative is available;
- b) Contracts for the execution of mandatory works by statutory undertakers, such as utilities providers;
- c) The work to be executed or the goods or materials to be supplied consist of repairs to or the supply of parts for existing proprietary machinery or plant or the execution of work or supply of goods or services or materials necessary for maintenance or repairs to existing machinery or plant;
- d) Goods, works or services procured in a genuinely unforeseeable emergency (e.g. natural disasters such as flooding or fires, immediate changes to legislation) because of a need to respond to events that were beyond the genuine control of the Council. Any such contract entered into by the Council must not be for a term of more than 6 months. It must be noted that not allowing sufficient time to tender shall not be considered an emergency;
- e) Legal services falling within Regulation 10(1)(d) of the Public Contracts Regulations 2015;
- f) Dealings in the money market or obtaining finance within Regulation 10(1)(e) and 10(1)(f);
- g) Purchases at auction or at public fairs or markets;
- h) Goods or Services where the Council's needs are only capable of being met by one supplier and where the contract assists the Council in meeting its statutory duties;
- i) Contracts falling within the Light Touch Regime;
- j) Life or death – where there is a significant chance that the life or health of Officers, Councillors or the public will be put at real risk;
- k) Increased costs/loss of income – where the Council will incur significant avoidable costs or lose significant income (significant shall be taken to mean material in the sense that it is either material to the project, the service or the Council);
- l) Limited markets – supply of the product or service is demonstrably restricted to a single source of supply; or,

m) Other unforeseen circumstances or specific project conditions that would result in unacceptable commercial and/or reputational impact.

2.4 For contracts less than £50,000, the Procuring Officer must complete the relevant exemption request form and seek the approval of the Head Performance and Governance.

2.6 For contracts at and above £50,000 and below Threshold 3 (see Rule 15 Tables 1 and 2 for Thresholds), the Procuring Officer must complete the relevant exemption request form and seek the approval of the Head of Performance and Governance and the Monitoring Officer. All such requests shall be reported to the S151 Officer.

2.6 The Procuring Officer is responsible for ensuring that the exemption request forms are duly completed and signed prior to the award of a contract.

2.7 No exemption shall be granted for contracts over Threshold 3 unless expressly permitted by the Head of Performance and Governance and the Monitoring Officer.

2.8 Regardless of whether an exemption has been sought, the necessary authorisations to procure, award, amend or sign a contract (at Contract Procedure Rule 27) must also be obtained.

3. Compliance

3.1 Every contract entered into on behalf of the Council shall comply with:

- a) These Contract Procedure Rules;
- b) The Council's Financial Procedure Rules; and,
- c) All relevant English and European legislation.

3.2 All members of staff and consultants engaged in any capacity to manage or supervise the procurement of any works, goods or services for the Council must comply with these Contract Procedure Rules. Non-compliance with these Rules may constitute grounds for disciplinary action.

3.3 If there is any doubt about the application of the Rules, the issues should be referred to the Monitoring Officer.

4. Conflicts of Interest

4.1 Members of staff must avoid any conflict between their own interests and the interests of the Council. This is a requirement of the Council's Employee Code of Conduct (Sections 6, 7, 10, 11 and 12) and includes:

- a) Not accepting gifts or hospitality from organisations or suppliers that the Council has dealings with;

- b) Not working for organisations or suppliers that the Council has dealings with;
- c) Notifying the Head of Performance and Governance and Monitoring Officer in writing if an Officer has links with an organisation or supplier who is tendering or quoting for a contract with the Council or already has a contract with the Council (for example, where a family member or close friend works for the organisation).

4.2 All consultants engaged to act on behalf of the Council must declare that they will avoid any conflict between their own interests or those of any of their other clients and the interests of the Council.

4.3 If a Councillor or a member of staff has an interest (direct or indirect), financial, otherwise, in a contract or proposed contract, he/she must declare it in writing to the Monitoring Officer and their Head of Functions/Director as soon as he/she becomes aware of the interest. A Councillor or member of staff who has an interest in a contract must not take part in the procurement or management of that contract.

4.4 The Monitoring Officer must maintain a record of all declarations of interest notified by Councillors and Officers.

5. Prevention of Bribery and Corruption

5.1 A contract may be terminated immediately and any losses to the Council arising from the termination recovered from the supplier, if the supplier, or anyone acting on his behalf (with or without the supplier's knowledge), offers or promises or gives a financial or other advantage to a Councillor, any member of staff, or any consultant in connection with the contract.

5.2 Any Councillor, member of staff or consultant who becomes aware or has reason to believe that a supplier or potential supplier has committed one of the corrupt acts referred to in Rule 5.1, must report it to the Monitoring Officer.

6. Relevant Legislation

6.1 For the purposes of these Procedure Rules Relevant Legislation is defined as the following legislation:

- a) Public Contracts Regulations 2015 (PCR 2015);
- b) Concession Contracts Regulations 2016 (CCR 2016);
- c) Public Services (Social Value) Act 2012;
- d) Freedom of Information Act 2000;
- e) General Data Protection Regulation (GDPR) and the Data Protection Act 2018;

- f) Equality Act 2010;
- g) Modern Slavery Act 2015;
- h) Transfer of Undertakings (Protection of Employment) Regulations 2006;
- i) Any industry or sector-specific legislation pertaining to the subject matter of the Contract.

6.2 The Procuring Officer should be aware that the Relevant Legislation may operate to dictate the method of procurement and the content of any related contract.

6.3 When planning and preparing all procurement and contracting activities the Procuring Officer shall have regard to the Relevant Legislation and seek advice from the Head of Performance and Governance and Monitoring Officer where necessary to ensure that any applicable Relevant Legislation has been complied with.

7. Responsibilities of Heads of Functions

7.1 Procurement activity in the Council is devolved to individual Function Areas, which are supported in their purchasing activities by SHAPE Legal Partnership, Finance Specialist and Case Officers and by Procurement Officers.

8. Estimate of Contract Value

8.1 The value of a contract is the total amount that the Council expects to pay for the contract, including any additional options, lots, renewals and/or extensions.

8.2 Where the contract period is indefinite or uncertain, the value shall be calculated on the basis that the contract will be for a period of 4 years.

8.3 Contracts must not be packaged or divided into smaller units for the purpose of creating lower value contracts to avoid any provision of these Rules or EU procurement legislation. When tendering consideration must be given to the extent to which it is appropriate to divide the contract into lots to facilitate opportunities for small and medium sized enterprises and voluntary organisations.

8.4 The repeat direct award of contracts or purchase orders for the same or similar services, whatever the value of the individual contracts/purchase orders, to the same supplier shall, for the purposes of determining the aggregated contract value and the application of these Rules, be regarded as extensions to a single contract.

9. Use of Framework Agreements

9.1 The use of framework agreements is permitted for any value of contract. The Monitoring Officer must be consulted, and confirmation given that the Council may lawfully access the

framework before a purchase. The Head of Performance and Governance must be informed of the use of a Framework Agreement.

9.2 In order to select a supplier for a call-off contract under a multi-supplier Framework Agreement, or to conduct a mini competition, the Procuring Officer must follow the procedure set out in that Framework Agreement.

9.3 The Head of Performance and Governance will keep a record of framework use.

10. Market Engagement

10.1 Officers may, prior to commencing the procurement process and on the advice of the Head of Performance and Governance, consult potential candidates in general terms about the nature, level and standard of the supply and seek market views and intelligence that can be used in the planning and conduct of the procurement process.

11. Performance Bonds, Parent Company Guarantees and Insurance

11.1 It is the responsibility of the Procuring Officer, in consultation with the Section 151 Officer to set, where appropriate, adequate levels of insurance for every procurement.

11.2 The Procuring Officer must ensure that any insurance required by the Council is held by the provider with a reputable insurance company (ies) and that the policy (ies) are renewed as necessary during the contract period.

11.3 The Procuring Officer must consult the Section 151 Officer concerning whether a performance bond or a deposited sum is needed where:

- a) The contract is for construction and the value of the contract is in excess of £100,000; or
- b) The contract value is above £1,000,000; or
- c) Where it is proposed to make stage or other payments in advance of receiving the whole of the contract and there is a concern about the stability of the candidate.

11.4 The Procuring Officer must consult the Section 151 Officer concerning whether a parent company guarantee is needed where:

- a) The Total Contract Value exceeds the EU Threshold; or
- b) The award of the contract is based on the evaluation of the parent company or there is some concern about the stability of the supplier.

12. TUPE

12.1 Where relevant, the Procuring Officer must consider the implications of the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended and consult with the Monitoring Officer as to their application.

13. Dispute Resolution

13.1 The Procuring Officer must consider the procedure for resolving disputes arising in relation to the procurement and, where appropriate, contracts shall contain provisions for alternative dispute resolution.

14. Form of Contract

14.1 All contracts, regardless of value, shall be accompanied either by the Council's:

- a) Standard Terms and Conditions of contract; or,
- b) The standard form of contract; or,
- c) Bespoke terms.

14.2 Further guidance regarding the mandatory contract terms to be included in Council contracts can be sought from the Head of Performance and Governance or the Monitoring Officer.

14.3 All Contracts are to be executed in accordance with Procedure Rule 29.

15. The Procurement Process

15.1 The process to be adopted is determined by the value of the contract. The procedure must be both appropriate and proportionate to the value of the contract. It must ensure that the Council achieves Best Value which is to be assessed by an evaluation of both the price and quality of competitive bids so as to determine the most economically advantageous over the life of the contract.

15.2 Procuring officers must, as a minimum, obtain quotations and tenders as follows:

A. Contracts for Goods and Services

Table 1

| Threshold | Value |
|-----------|------------------------------------------|
| 1 | £5,000 |
| 2 | £50,000 |
| 3 | EU Supplies Goods and Services Threshold |

| Contract Value | Procurement Process | Advertising Requirements | Process Guidance |
|----------------|---------------------|--------------------------|------------------|
|----------------|---------------------|--------------------------|------------------|

| | | | |
|---------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|
| Up to Threshold 1 | <p>(i) Must demonstrate Best Value by following the procurement process for Lower Value Purchases.</p> <p>(ii) Alternatively, the procurement is carried out under the Rules of an appropriate Framework.</p> <p>Written quotation(s) must be received. One quotation may be sufficient if Best Value is evidenced.</p> | None | <p><i>See Rule 19.</i></p> <p><i>Low Value Procurement process</i></p> |
| Between Threshold 1 and 2 | <p>(i) A minimum of 3 quotations received via the Council's Electronic Tendering System.</p> <p>(ii) Alternatively, the procurement is carried out under the Rules of an appropriate Framework.</p> | Optional | <p><i>See Rule 20.</i></p> <p><i>Quotations</i></p> |
| Between Threshold 2 and 3 | <p>(i) An invitation to Tender via the Council's Electronic Tendering System.</p> <p>(ii) Alternatively, the procurement is carried out under the Rules of an appropriate Framework.</p> | <p>(i) Open advertisement on the Council's Electronic Tendering System and in Contracts Finder.</p> <p>(ii) In accordance with the Rules of the Framework.</p> | <p><i>See Rule 21.</i></p> <p><i>Procurement processes requiring Invitations to Tender</i></p> |
| At and above Threshold 3 | <p>(i) Invitation to Tender as per the Relevant Legislation and via the Council's Electronic Tendering System.</p> <p>(ii) Alternatively, the procurement is carried out under the Rules of an appropriate framework.</p> | <p>(i) Open advertisement on the Council's Electronic Tendering System, in Contracts Finder and in the EU.</p> <p>(ii) In accordance with the Rules of the Framework.</p> | <p><i>See Rule 22.</i></p> <p><i>Procurement processes over the EU Threshold</i></p> |

B. Contracts for Works

15.3 For works contracts, the Council utilises several lists of approved contractors (Approved Select Lists) for example the Devon and Somerset Select List of Approved Contractors (SLOAC) and Construction Line. These Approved Select Lists provide access to pre-qualified contractors who have registered their interest in working in the Somerset West and Taunton area.

15.4 Use of an Approved Select List (ASL) for works contracts below EU thresholds is encouraged but it is not mandated. Where it is used, there are different Rules associated with the award of works contracts, these are detailed in the Table 2 below.

Table 2

| Threshold | Value |
|-----------|--------------------|
| 1 | £15,000 |
| 2 | £150,000 |
| 3 | EU Works Threshold |

| Threshold | Non-Select List Rules | Select List Rules | Process Guidance |
|---------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| Up to Threshold 1 | <p>(i) The Officer shall seek sufficient competition to demonstrate that Best Value has been achieved.</p> <p>(ii) Alternatively, the procurement is carried out under the Rules of an appropriate Framework.</p> <p>Written quotation(s)* must be received. One quotation may be sufficient if Best Value is evidenced.</p> | <p>(i) A minimum of 2 quotations is invited with at least 1 randomly selected by Approved Select List Software.</p> <p>The Officer must be satisfied that Best Value has been achieved.</p> <p>Written quotations must be received.</p> | <p><i>See Rule 19.</i></p> <p><i>Low Value Procurement Process</i></p> |
| Between Threshold 1 and 2 | <p>(i) A minimum of 3 quotes received via the Council's Electronic Tendering System.</p> <p>(ii) Alternatively, the procurement is carried out under the Rules of an appropriate Framework.</p> | <p>A minimum of 3 quotes invited, at least 2 randomly selected by the Approved Select List Software.</p> | <p><i>See Rule 20 Quotations</i></p> |
| Between Threshold 2 and 3 | <p>(i) An Open Tender is advertised via the Supplying the Southwest Portal.</p> <p>(ii) Alternatively, the procurement is carried out under the Rules of an appropriate Framework.</p> | <p>For values between £150,000 and £250,000:</p> <p>A minimum of 5 invitations and 3 confirmed expressions of interest. At least 3 invitations being randomly selected by the Approved Select List Software.</p> <p>For values between £250,000 and EU Works threshold:</p> <p>All relevant registered suppliers on the Approved Select List</p> | <p><i>See Rule 21 Procurement processes requiring Invitations to Tender</i></p> |

| | | | |
|-------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|------------------------------------------------------------------|
| | | invited to register interest. | |
| At or above Threshold 3 | (i) Invitation to Tender as per the Relevant Legislation and via the Council's Electronic Tendering System; or (ii) Alternatively, the procurement is carried out under the Rules of an appropriate Framework. | Not Applicable above EU Works Threshold | <i>See Rule 22. Procurement processes over the EU Threshold.</i> |

16. The Procurement Sourcing Strategy

16.1 For procurement processes with a Total Contract Value in excess of the EU Threshold the Procuring Officer must seek approval from the Monitoring Officer prior to procurement and must consult with the Head of Performance and Governance to develop a procurement sourcing strategy.

17. Specification

17.1 Each procurement must be appropriately specified, and the Selection and Award criteria must be formulated in advance of inviting expressions of interest to ensure the Council obtains value for money and the procurement process is transparent.

17.2 All works, goods and services must be specified by reference to European standards, or national standards if no European standards are set. The specification must be a clear and comprehensive description of the Council's requirements and should incorporate measurable and, so far as is possible, objective quality and performance criteria to enable a proper assessment to be made of the supplier's ability to meet the Council's requirements.

18. Standard Procurement Documents

18.1 The Procuring Officer must use standard Procurement Documents (obtained from the SPL) or relevant Framework Agreement or Dynamic Purchasing System documents.

18.2 Where it is necessary to vary the documents at 18.1, the Procuring Officer must consult with the Head of Performance and Governance.

19. Procurement Processes

19.1 The following is applicable to each process:

- a) Where there is a suitable Framework Agreement, Dynamic Purchasing System or Corporate Contractual Arrangement approved by the SPL, that Framework Agreement, Dynamic Purchasing System or Corporate Contractual Arrangement

shall be used, provided that such a course of action achieves the principles of Best Value;

- b) Where acceptance of quote or tender is made by the issuing of a Purchasing Order, the Purchase Order must refer to the Council's Standard Terms and Conditions of Contract, except for where the complexity of the contract requires more bespoke terms, in which case the Purchase Order shall make separate reference to these;
- c) Unless otherwise specified in these Rules, unsuccessful candidates shall be notified and, at their request, shall be given the reason why they were unsuccessful without breaching the commercial confidentiality of other candidates.

19.2 In all cases other than Lower Value Purchases, the Council's Standard Procurement Documents must be used.

Process for Lower Value Purchases

19.3 For contracts up to and including the Total Contract Value of £5,000 (goods and services), or £15,000 (works), the Procuring Officer is required to achieve a minimum of one written quotation to demonstrate compliance.

19.4 Compliance with the principle of Best Value will be demonstrated by evidence of the application of commercial considerations in the decision and a demonstrable conclusion that a better value outcome is unlikely to be achieved without a disproportionate application of further resource input.

19.5 Where compliance with the principle of Best Value cannot be demonstrated by seeking one written quotation, the Procuring Officer shall seek more than one quote.

19.6 The Procuring Officer may choose to either:

- a) Place an order with the selected supplier on the basis of a pre-quoted price (such as in a supplier's catalogue), having satisfied themselves that the price to be paid represents Best Value; or
- b) Select a minimum of one potential candidate to be invited to submit a quotation.

19.7 Where the Procuring Officer is unable to select a potential candidate and/or demonstrate Best Value, the procedure set out at Rule 20 (Quotations) must be followed.

19.8 Acceptance will be notified to the successful supplier by issue of a Purchase Order.

19.9 The Procuring Officer must document their decision-making process to demonstrate compliance with this section.

20. Process Requiring Quotations

20.1 For contracts with a Total Contract Value of more than £5,000 (£15,000 for works) but less than £50,000 (£150,000 for Works), the Procuring Officer is required to achieve a minimum of 3 quotations via the Council's Electronic Tendering System (ETS).

20.2 Compliance with the principle of Best Value will be demonstrated by evidence of the application of commercial considerations in the decision and a demonstrable conclusion that a better value outcome is unlikely to be achieved without a disproportionate application of further resource input.

20.3 Where compliance with the principle of Best Value cannot be demonstrated by seeking 3 written quotations, the Procuring Officer shall seek more than 3 quotations and, if considered necessary, run an open competition

20.4 In respect of works contracts only, Procuring officers are required to consider the use of an ASL in the first instance and to justify, and to record, the reasons for non-use.

20.5 Competitive quotations must be sought inviting at least 3 candidates registered on the ETS, or the relevant ASL.

20.6 In the event that no suitable candidates can be found on the ETS, the Procuring Officer may also place an open advertisement in the ETS and in Contracts Finder.

20.7 If the Procuring Officer cannot obtain 3 quotations, the Procuring Officer must satisfy themselves that they have achieved Best Value and must seek approval from the SPL in order to proceed with the procurement. Justification and approval to proceed must be recorded and available for inspection.

20.8 Acceptance will be notified to the successful supplier by issue of a Purchase Order and Contract.

20.9 Where the Goods, Services or Works will be delivered or utilised over a period of time a Contract Award Record must be made on the Council's Contracts Register.

21. Procurement Processes Requiring Invitations to Tender

21.1 For contracts with a Total Contract Value of £50,000 (£150,000 for Works) but less than the EU Threshold, the Procuring Officer must seek the advice of a procurement Officer

21.2 The Procuring Officer is required to invite tenders from any and all qualified candidates by advertising the opportunity via the Council's Electronic Tendering System and in Contracts Finder. Where an Approved Selection List is used the Procuring Officer must obtain at least 3 confirmed expressions of interest.

21.3 An Invitation to Tender shall be sent to all parties who have expressed an interest.

21.4 The successful supplier and unsuccessful candidates shall be notified of the outcome by issue of a letter sent electronically via the Council's Electronic Tendering System.

21.5 A Purchase Order must be raised.

21.6 A Contract Award Record must be made on the Council's Contracts Register, and in Contracts Finder.

22. Procurement Processes for Contracts of a Value Over the EU Threshold

22.1 The Head of Performance and Governance must obtain approval from the Monitoring Officer before beginning a procurement exercise in respect of any contract at and above the relevant EU Threshold.

22.2 For contracts at and above the relevant EU Threshold, the Procuring Officer is required to invite tenders from any and all qualified candidates by advertising the opportunity via the Council's Electronic Tendering System, in Contracts Finder and EU-wide.

22.3 A statutory minimum period of advertising will apply which will vary depending on the procedure used but will not be less than 10 working days.

22.4 In most cases, the Open Procedure, Restricted Procedure or Competitive Procedure with Negotiation shall be used, however, the advice on the appropriate route to procurement must be sought from the SPL in conjunction with SHAPE Legal Partnership.

22.5 The successful supplier and unsuccessful candidates shall be notified in accordance with the Relevant Legislation and a Standstill Period shall be observed.

22.6 A Purchase Order must be raised.

22.7 A Contract Award Record must be made on the Council's Contracts Register, in Contracts Finder and in the Official Journal of the EU (or elsewhere in accordance with EU Legislation).

23. Confidentiality of Tenders and Quotations

23.1 All matters concerned with quotations and tenders must be treated as confidential, and any information, discussion or correspondence entered into should be confined to those officers of, or consultants to, the Council who are directly concerned.

23.2 The amount or value of any tender or quotation which is to be considered by the Council or Executive shall not be made public before the meeting and shall be omitted from any written report on the subject which may be circulated before the meeting unless the report is marked as confidential.

24. Submission, Receipt and Opening and Evaluation of Tenders

24.1 The submission, receipt, opening and evaluation of tenders is subject to specified procedures (based on the Total Contract Value) and any Officer involved in a procurement

that is likely to require tenders must seek guidance from Head of Performance and Governance. As a minimum requirement:

- a) All Contracts at and above the Total Contract Value of £50,000 (£150,000 for Works) shall be submitted electronically through the Council's Electronic Tendering System;
- b) Tenders received after the stated date and time shall not be accepted under any circumstances. For the purposes of these Rules the time will be deemed to be at the first stroke, e.g. noon shall be 12:00:00;
- c) Submissions shall be verified and opened on the Council's Electronic Tendering System.

25. Contract Selection Criteria and Award Criteria

25.1 The Selection Questionnaire shall be used to assess a candidate's ability to meet the Council's requirements or minimum standards of suitability, capability, legal status or financial standing.

25.2 For all Contracts over the Total Value of £50,000 the Officer shall include the Selection Questionnaire within the Procurement Documents. For works contracts the Procuring Officer should seek guidance from the Head of Performance and Governance in respect of the correct use of selection Questionnaires.

25.3 The Award Criteria shall be used to assess a candidate's ability to deliver the Council's requirements under the Contract, achieving Best Value.

25.4 The Contract shall be awarded to the candidate whose tender best meets the Award Criteria (as set out in the Procurement Documents).

25.5 The Procuring Officer shall consult with the Head of Performance and Governance for guidance on the Selection and Award criteria prior to issuing the Procurement Documents.

26. Intention to Award a Contract

26.1 For contracts with a Total Contract Value over the EU Threshold, Procuring officers must allow candidates a mandatory minimum Standstill Period of 10 calendar days before entering into a contractually binding agreement with the successful supplier(s). It is most important that any communication with the preferred candidate(s) does not constitute a Contract award, conditional or otherwise.

26.2 Following any Standstill Period, if appropriate, an EU Award Notice must be placed by the Head of Performance and Governance.

26.3 All candidates must be simultaneously notified in writing of the award and all letters informing them of the outcome of the Tender must comply with the Relevant Legislation.

26.4 Should any further communication with the candidates be requested/required, advice should be sought by the Head of Performance and Governance prior to any such communication.

26.5 Any complaints, correspondence threatening challenge or formal court proceedings challenging the decision must be immediately submitted to the Head of Performance and Governance and Monitoring Officer.

27. Authorisations

Authority to Procure a Contract

27.1 Heads of Function or a Director may authorise a procurement exercise in respect of contracts of any value so long as:

- a) The decision to procure a contract is not a Key Decision;
- b) The procurement relates to their Function Area;
- c) In doing so they are acting in accordance with the Financial Procedure Rules; and,
- d) Where the contract value is above the relevant EU Threshold the approval of the Monitoring Officer has been obtained.

Authority to Award or Amend a Contract

27.2 Approval to award or amend a contract, Framework Agreement or Dynamic Purchasing System can only be given as set out in Table 3.

27.3 In respect of contract amendments, the Total Contract Value is the total value of the contract plus the value of any proposed amendment.

27.4 The Head of Function or Function responsible for the procurement will determine what a politically sensitive contract is for the purposes of Table 3 however, where the contract value is £1,000,000 or above, the Head of Function or Director shall seek the advice of the Monitoring Officer before concluding that a matter is not politically sensitive.

Authority to Sign a Contract

27.5 The Chief Executive, Section 151 Officer and Monitoring Officer may sign any contract.

27.6 Heads of Function or a Director may sign contracts in respect of procurement within their Function Areas.

27.7 Heads of Function or a Director may delegate their Authority to sign to an Officer, however this must be in accordance with the requirement at Finance Procedure Rule 3.1.31 to maintain a register of approved authorisers.

27.8 As well as signing, contracts may also require sealing under Contract Procedure Rule 29.

Table 3

| Total Contract Value | | Approval to Award | Approval to sign Contracts |
|-------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|------------------------------------------------------------------------|---------------------------------------------------------------------------------------|
| Contracts <u>of any value</u> involving: Significant risk, Significant externalisation of services Politically sensitive issues. | | Key Decision to be made by the Executive. | Chief Executive, Director, Head of Function, Section 151 Officer, Monitoring Officer |
| Over £1,000,000* and politically sensitive | | Key Decision to be made by the Executive. | Chief Executive, Director, Head of Function, Section 151 Officer, Monitoring Officer |
| Over Threshold 3 | | Chief Executive Director, Head of Function, or the Section 151 Officer | Chief Executive, Director, Head of Function, Section 151 Officer, Monitoring Officer |
| Over £50,000 but less than Threshold 3 | Over £150,000 but less than Threshold 3 | SPL K-grade Approved Procurement Practitioner (across function). | Chief Executive, Director, Head of Function, Section 151 Officer, Monitoring Officer |
| Up to and including £50,000 | Up to and including £150,000 | Grade H Approved Procurement Practitioner (within Function). | Chief Executive, Director, Head of Function, Section 151 Officer, Monitoring Officer. |
| Up to and including £5,000 | Up to and including £15,000 | Grade F Approved Procurement Practitioner (within Function). | Chief Executive, Director, Head of Function, Section 151 Officer, Monitoring Officer. |
| Up to £1,000 | Up to £1,000 | Any Grade having completed the Passport to Procure e-learning. | Chief Executive, Director, Head of Function, Section 151 Officer, Monitoring Officer. |

*See Contract Procedure Rule 27.4 above in respect of contracts valued at over £1,000,000

28. Further Authorisation for Advance Payments

28.1 Contracts requiring payment in advance must be authorised in accordance with the Financial Procedure Rules. In particular:

- a) Payments in advance in excess of £5,000 must be authorised by a Finance Specialist; and,
- b) Payments in advance in excess of £50,000 must be authorised by the Section 151 Officer.

29. Deeds, Sealing and Signing of Contracts

29.1 A Contract must be sealed with the common seal of the Council where:

- a) The Council may wish to enforce the contract more than 6 years after its end (e.g. construction works); or,
- b) The price paid or received under the contract is a nominal price and does not reflect the value of the goods, services or works; or,
- c) The Total Contract Value is at and above £500,000.

29.2 Before a contract can be sealed by the Council, the Procuring Officer must provide the relevant Authority to award in writing from the appropriate decision maker.

30. Contracts Register

30.1 All contracts having a value or estimated value of £500 (five hundred pounds) or more must be entered in the Council's Contracts Register, which will be monitored by the SPL.

30.2 The Procuring Officer shall ensure that original signed copies of the contract are stored in accordance with the Council's retention policy.

30.3 The Procuring Officer must keep and maintain records in respect of each Tender and Contract (such records should include the materials pertaining to all of the stages of the procurement cycle).

31. Contract Documents and Letters of Intent

31.1 Wherever practicable, work under a contract must not start until the contract documents and all other procedures have been completed to the satisfaction of the relevant Head of Function or, in the case of a procurement valued at £100,000 or more, the Head of Function and Monitoring Officer. A letter of intent must not be issued unless approved by the Monitoring Officer.

32. Variations and Extensions

32.1 Variations must not exceed the scope, financial value or duration of the advertised contract.

32.2 Where relevant Officer considers that a proposed variation may materially change or exceed the specification, price or duration of a contract, advice must be obtained from the SPL.

32.3 Variations to contracts must be approved and signed by the relevant officers in accordance with Table 3 at Rule 27.

32.4 Extensions of contracts may only be made where:

- a) There is budgetary provision; and,
- b) Best Value can be clearly demonstrated, and that the extension will not contravene any legal requirement; and,
- c) The extension is within the scope (description of Goods, Services or Works, duration and Total Value) of the original Contract; and,

32.5 For Contracts below the EU Threshold:

- a) There is a provision stipulated in the original contract for an extension;
- b) The extension does not cause the Total Contract Value to exceed the relevant EU Threshold; or,

32.6 For contracts at or over the EU Threshold, the original Contract Notice advertised, and the contract permits the extension.

32.7 Where the Officer responsible considers that a proposed extension may materially change or exceed the specification, price or duration of a contract, Authority for the extension must be obtained from the Head of Function or a Director for the Function Area to which the procurement relates.

32.8 Extensions to contracts must be approved and signed by the relevant officers in accordance with the approval levels set out in Table 3 in section 28.

32.9 For contracts with a Total Contract Value exceeding the EU Threshold, any variation or extension to a Contract which in aggregate results in additional costs exceeding 10% of the original contract value or £75,000 (whichever is the greater) shall be subject to the prior approval of the Head of Function or a Director for the Function Area to which the procurement relates and the Monitoring Officer.

32.10 For contracts with a Total Contract Value exceeding the EU Threshold, any variation or extension to a contract which in aggregate results in:

- a) additional costs exceeding 15% of the original contract value or £150,000 (whichever is the greater);

- b) A significant delay in the time for completion; or,
- c) Significant risks not initially identified, shall be reported at the earliest opportunity to the Section 151 Officer and shall be subject to their approval in conjunction with an appropriately empowered Officer

32.11 The Officer responsible for the amendment to the contract must ensure that all variations and/or extensions, are stored with the original signed and dated contract.

33. Contract Management and Contract Expiry

33.1 A contract manager must be appointed for all new contracts and named in the Procurement Documents and contract.

33.2 All contracts with a Total Contract Value over the relevant EU Threshold must have in place:

- a) A contract operations manual and plan;
- b) A risk register, and risk and mitigation strategy;
- c) A contingency plan;
- d) An exit management plan, together with appropriate contract clauses, to minimise the potential impact on the Council's service delivery, as a result of the expiry, or early termination, of the contract.

33.3 For any contract with a total value below the relevant EU Threshold, where supplier failure would have an adverse impact on the Council's service delivery the requirements of 33.2.3 and 33.2.4 apply equally.

34. Further Advice

34.1 Should the procurement or management of a contract involve the following, or should the Procuring Officer have any queries regarding the following, the Officer should seek the advice of the SPL or Legal Services as appropriate:

- a) Confidentiality of sensitive commercial information;
- b) The organisation of Presentations, Demonstrations, Site visits and interviews;
- c) Abnormally low bids;
- d) Contracts exceeding the written estimate;
- e) Clarification of tenders from candidates;
- f) Post tender negotiation and best and final offers;
- g) Electronic auctions;

- h) Early termination of a contract;
- i) Assignment or novation of a contract;
- j) State aid;
- k) Development agreements.

35. Amendments to These Contract Procedure Rules

35.1 The Monitoring Officer shall be empowered to review the Contract Procedure Rules from time to time and as often as may be necessary in consultation with the S151 Officer and Lead Councillor and, following formal approval by Full Council, shall publish details of any amendments.