

## **APPENDIX 1**

### **E CONTRACT PROCEDURE RULES**

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## **INTRODUCTION**

These rules explain how all goods, works and services must be procured. All Officers must follow these rules.

### **E1. Basic Principles**

The aims of the rules are to;

- ensure compliance with all legal requirements
- achieve best value
- ensure transparency, openness, non discrimination and fair competition
- demonstrate probity, consistency, accountability and integrity
- support the Council's corporate and departmental aims
- protect Officers
- ensure compliance with the Council's Procurement Strategy
- Ensure that tenders and quotations are accepted, and if required subsequently varied, by officers in accordance with the Scheme of Delegation but subject to retrospective scrutiny by the Council's scrutiny committees whose role will be to hold officers to account for the decision they reach pursuant to these rules.

### **E2. Statute**

- 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.
- The Council must also comply with various other statutes when purchasing including the Public Contract Regulations 2006 and the Public Contracts (Amendment) Regulations 2009. These regulations incorporate the EC Treaty and EU procurement directives into national law and are sometimes referred to as the "EU procurement rules". The risks of non compliance are significant and include awards of damages and contracts being set aside.

### **E3. Compliance**

- These rules apply to;
  - the purchase of all goods, services or works;
  - the sale of services, goods and assets;
  - concessions;
  - partnerships;
  - grants and external funding arrangements.
- All Officers are responsible for ensuring that these rules are complied with. The table below sets out specific responsibilities for different Officers;
- For the avoidance of doubt these rules apply to procurement of contracts on behalf of Merseyside Pension Fund.

## Responsibilities

Strategic Directors and Chief Officers	<ul style="list-style-type: none"> <li>- Must identify key strategic procurements, ensure they are properly resourced. Legal, Financial, HR and Procurement input must be sought at the initial stages.</li> <li>- Must ensure that schemes of delegation are documented in writing and copied to Head of Legal and Member Services.</li> </ul>
Heads of Service	<ul style="list-style-type: none"> <li>- Must ensure that only Officers with sufficient training, experience and knowledge of these rules and The Chest carry out procurement activity.</li> <li>- Must ensure that resources are available to allow compliance with the rules.</li> </ul>
Officers	<ul style="list-style-type: none"> <li>- Must ensure they understand these rules and their obligations under them before commencing a procurement.</li> <li>- Must use The Chest (the Council's E-tendering system) for all procurement activities valued at £10,000 or more unless Procurement agree otherwise.</li> <li>- Involve Procurement and Legal Services at the necessary stages.</li> </ul>

- Third parties acting on behalf of the Council must also comply with the rules. Officers instructing third parties to procure contracts must supply them with a copy.
- Officers and third parties must ensure that any conflicts of interest are avoided. Any conflicts of interest must be declared to appropriate line managers in the Council as set out in the Officer Code of Conduct. Legal advice must be obtained by Officers where any conflict has potential to impact on contractual relationships.
- Corruption is a criminal offence. All Officers who let, manage or supervise contracts must act in accordance with the highest standards of propriety and ensure adequate records are kept.
- Differences in the interpretation of these rules will be resolved by the Head of Legal and Member Services in consultation with the Head of Procurement.
- Where these rules give powers/responsibilities to Strategic Directors and Chief Officers, the Head of Legal and Member Services or the Head of Procurement they may decide to delegate these powers/responsibilities. Such delegations must be evidenced in writing but the delegator will remain ultimately responsible for ensuring compliance with these rules.

### E4. Consequence of Breach

- Failure to comply with any of these rules may be considered a **breach of the Officer Code of Conduct and may result in disciplinary action.** Any Officer who fails to follow these 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.



- Where it becomes apparent that a Service has failed to comply with the rules then the Head of Service must notify Internal Audit. The Head of Service must compile a report outlining the reasons for the non-compliance and the steps taken to prevent a recurrence. Their Internal Audit will, if the breach of the rules is in his reasonable opinion significant submit a report to the Head of Procurement and Head of Legal and Member Services with appropriate recommendations before reporting to Audit and Risk Management Committee.

## **E5. Review**

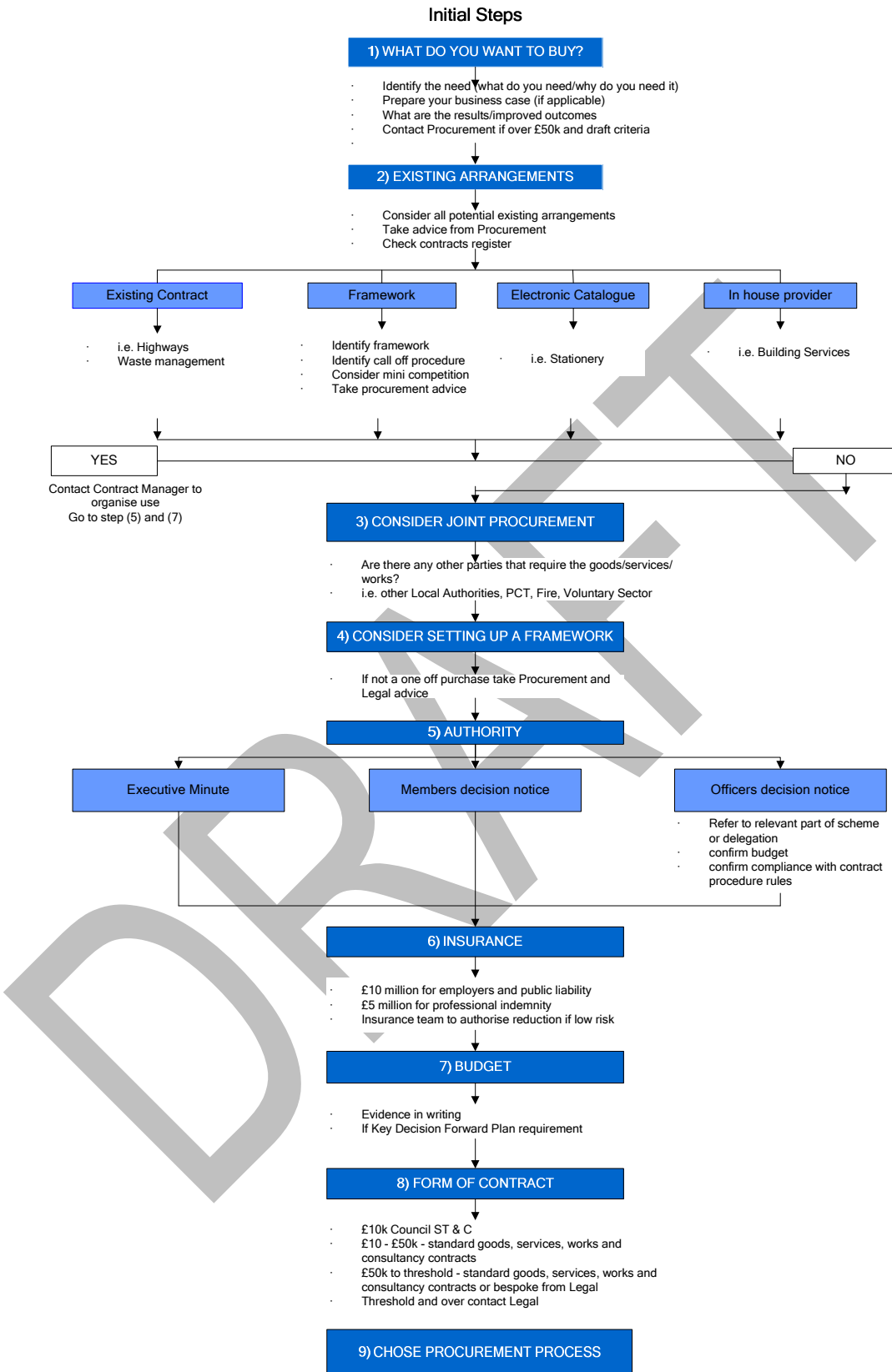
- The Head of Legal and Member Services will keep these rules under review and have authority to make minor amendments and updates as required, after consultation with the Head of Procurement.
- Any significant (in their reasonable opinion) changes require the consent of full Council.
- The Head of Legal and Member Services will report to Audit and Risk Management Committee who will make recommendations to Council.
- Any changes will be notified by the Head of Legal and Member Services to all Strategic Directors for dissemination to officers involved in procurement.

## **INITIAL STEPS**

### **E6. Summary**

- Before commencing a procurement activity all of the steps on the flow chart headed 'initial steps' must be addressed. Detailed commentary for each stage is set out in E7 to E25. Evidence of completion of each step must be recorded by the Officer on file for audit purposes.
- This section applies to all procurement activity. Officers should then refer to the specific section relevant to the value of their individual procurement as set out in E25. Further advice and support is available from Procurement.

# "TO BE AMENDED WHEN FINAL VERSION IS AGREED"



## **E7. Business Case**

The extent of the business case will depend on the value and associated risk of the procurement activity. Officers must consider:

- Identification of need and savings target (if appropriate)
- What are the planned results/improved outcomes
- Identify estimated cost and budget available
- Options appraisal
- Assess risks and how to manage
- Prepare specification/brief and timetable
- If your planned procurement is over £10,000 in value contact Procurement and prepare criteria to assess tenders.

## **E8. Corporate Contracts**

- Officers must always check if there is an existing Council contract in place before starting a new procurement activity.
- If a Council contract exists it must be used unless the contract allows for and Procurement authorise another course of action. Legal advice must be sought on exclusivity contract terms.
- Details of Council contracts can be obtained from the Procurement intranet site.

## **E9. Frameworks**

- 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'.
- 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.
- 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.
- Officers may only purchase from framework agreements with the guidance of Procurement.
- 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 Procurement.
- Authority to establish a new framework agreement must be evidenced in an Officer Decision Notice (ODN) signed by the Head of Legal and Member Services and Head of Procurement before procurement activity is started and based on a business case.
- Orders or 'call offs' from an existing framework will require the usual authority in compliance with E13.

## **E10. Electronic catalogues**

- Under the Oracle IBS system the Council has a number of existing contracts to purchase recurrent items.
- If an item is listed on a catalogue then this should be the purchase method unless Procurement have consented to an alternative arrangement.

## **E11. In house suppliers**

- Various services can be provided internally within the Council.
- Procurement can provide advice on utilising these services.
- In house suppliers should be used in all circumstances unless the relevant Head of Service agrees otherwise with the Head of Procurement

## **E12. Joint procurement**

- Officers must always consider working with others either internally or externally.
- Where there may be benefits to a joint procurement with other service areas or public bodies to achieve economies of scale and prevent duplication Procurement must be contacted for advice.

## **E13. Authority**

- Before beginning a procurement activity the Officer is responsible for ensuring that the appropriate authority is in place. The form of the authority will depend on the value, strategic importance, budget implications and risks.
- Officers must consider whether the decision to procure is a key decision and if so ensure that details are entered onto the Forward Plan.
- This authority must be evidenced in writing. Acceptable forms of authority are;
  - minutes of the Executive
  - a Members' Decision Notice
  - an Officers' Decision Notice or
  - relevant extract from the appropriate Directorate or Financial Scheme of Delegation.
- E16 sets out the types of authority relevant for different values of procurement.

## **E14. Insurance**

- Officers are responsible for checking that all chosen contractors provide written evidence of adequate insurance to cover public liability, employers' liability and if necessary professional indemnity for the full duration of the contract.

- Indemnity levels must reflect the risk to the Council which typically will be for each and every contract;
  - £10 million for public liability
  - £10 million for employees liability
  - £1 to 5 million for professional indemnity
- In some cases where the contract is of low risk the levels required may be reduced but only following written consent of the Head of Finance.
- The insurance guidance notes on the Procurement intranet site provide further guidance.

### **E15. Budget**

- Before beginning a purchase the Officer is responsible for ensuring that there is enough money in the budget to cover the total whole life financial commitment being made including performance incentives, contingencies and provisional sums.
- Confirmation of budget must be evidenced in writing in the minutes or Decision Notice.

### **E16. Form of Contract**

- The form of contract must be identified during this initial stage.
- The table below shows the forms of contract used most widely for different types and values of procurement, where they can be located, whom to contact for advice, the authority required and summarises where completed contracts must be stored.
- Note: **Letters of Intent** will only be used in exceptional circumstances and with the consent of the Head of Legal and Member Services.

## Form of Contract

<b>Value of Contract</b>	<b>£10,000 or under</b>	<b>Over £10,000 to £50,000</b>	<b>Over £50,000 to threshold</b>	<b>Threshold* and over</b>
<b>Type of Contracts</b>	Council's standard terms and conditions  (if under £500 contract can be by correspondence)	Standard contracts available for; Goods Services and IT  Industry standards such as NEC, JCT, Jcli, ACE, RIBA & ICE are regularly used with Council standard amendments	Standard contracts available for; Goods Services and IT  Industry standards such as NEC, JCT, Jcli, ACE, RIBA & ICE are regularly used with Council standard amendments	Contact Legal Services  Industry standards such as NEC, JCT, Jcli, ACE, RIBA & ICE are regularly used with Council standard amendments
<b>Contract location</b>	Procurement intranet site	Procurement intranet site	Procurement intranet site	Contact Legal Services
<b>Contact for advice</b>	Procurement	Procurement  Legal can provide bespoke terms if none of the available contracts are appropriate	Contact Legal Services  Legal can provide bespoke terms if none of the available contracts are appropriate	Contact Legal Services
<b>Authority</b>	Relevant extract from Scheme of Delegation	Relevant Extract from Scheme of Delegation or ODN	ODN MDN or Minutes of Executive	ODN MDN or Minutes of Executive
<b>Storage of Contracts</b>	Head of Service must ensure a record of contract is held.	Head of Service must ensure record of contract is held. Officers must provide details to Procurement for the Contracts Register.	Contract details will be recorded by Procurement on the Contracts Register. One original copy of the contract will be held by Head of Legal and Member Services	Contract details will be recorded by Procurement on the Contracts Register. One original copy of the contract will be held by Head of Legal and Member Services

- Officers may require bespoke terms if procuring specialist services or goods such as IT. Legal Services must be contacted for advice prior to commencement of the procurement.
- 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.
- Under EU 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 2006 (as amended).
- Current **thresholds** are set out on the Procurement intranet site. When assessing the value of your procurement you must look at the total value for the whole life of the contract.
- Legal Services or Procurement can provide advice on the application of the regulations.
- Under the regulations purchasing of services is divided into two broad categories Part A and Part B (see E73). Procurement in consultation with Legal Services must approve Part B procurements under the regulations.
- The thresholds (net of VAT as at 1 January 2012) are;

*	<b>Supplies and Services</b>	<b>Works</b>
<b>Threshold</b>	<b>£173,934</b>	<b>£4,348,350</b>

### **E17. Procurement Team**

Provide advice and support at all stages of the procurement process regardless of value. They must be contacted at this initial stage if your procurement activity is £10,000 or over in value.

### **E18. Legal Services**

The Contract Team within Legal Services can provide legal advice on high-value or complex procurements. Officers are responsible for ensuring that Legal are involved in all above threshold contracts and any contracts involving legal issues for example TUPE or State Aid (see below). The Contract Team within Legal Services can provide legal advice on specialist IT social care, education and housing related contracts.

### **E19. Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)**

- TUPE will apply where Council services are;
  - Contracted out or “outsourced” to a third party; or
  - Re-let to a new contractor; or
  - Brought back in-house.
- Where TUPE applies staff will transfer automatically to the new employer on current terms and conditions. Continuity of service will be preserved.

- 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 have access to a pension scheme which is broadly comparable to the LGPS.
- Officers must, prior to the start of any procurement, consider whether TUPE will apply to Council or the current contractor's staff. Officers must consult with HR and Legal Services at an early stage and must ensure that sufficient time is built into the procurement process to deal with staffing issues.
- Where TUPE applies, the tender and contract documentation must include standard provisions dealing with TUPE and pensions as approved by the Head of Legal and Member Services. The contract must not commence until all TUPE and pensions issues have been resolved to the satisfaction of the Head of Legal and Member Services and the Head of HR.

## **E20. State Aid**

- State Aid is financial aid provided from public funds in whatever form which could distort competition and affect trade by favouring certain organisations. State Aid is generally prohibited.
- There are 4 elements which, if satisfied, give rise to State Aid;
  1. Aid is provided through public funds – for example grants, guarantees or loans on especially favourable terms or the provision of services on preferential terms; and
  2. Aid favours an undertaking engaged in economic activity - including voluntary and non-profit making public and private bodies. Favours means the aid gives them an advantage; and
  3. The aid threatens or distorts competition; and
  4. The aid affects trade between EC Member states.
- There are de minimis levels below which State Aid is not applicable.
- 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 State Aid.
- Officers must check with the third party the source of all public sector funding for the project.
- Officers must seek the advice of the Head of Legal and Member Services where appropriate.

## **E21. Bonds and Security**

- A performance bond or adequate security will be required where (in the opinion of the Head of Finance);
  - the nature and length of the contract is such that the risk of failure is sufficiently high; or
  - the estimated cost of re-establishing a service if the contract fails is relatively high; or
  - the financial and technical standing of the contractor is such that the risk of the failure is sufficiently high.
  - the value of the contract is over £500,000 unless otherwise agreed by the Head of Finance



- The amount of the bond will be 10% of the total contract value unless otherwise agreed by the Head of Finance and works shall not begin until the bond has been provided unless there is a provision in the contract entitling the Council to retain 10% of the value of any interim payments until the required bond has been executed.
- Where the contractor is a limited company which is part of a larger group, the ultimate holding company may be required to provide a parent company indemnity in addition to or instead of a performance bond or other security.
- Officers are responsible for identifying the need for a bond or relevant security, 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.

## **E22. Environmental Sustainability**

- In accordance with the Council's Procurement Strategy, 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.
- Officers must comply with the Council's Procurement Strategy and any other policies and guidance on sustainability issues.
- Procurement can offer support in this area.

## **E23. Equality and Diversity**

- All contractors will be expected to comply with national equality legislation to deliver services fairly and without unlawful discrimination and in accordance with the Council's Equality Policy for Employment and Service Delivery.
- Procurement can provide advice on the necessary documents which must be included in the tender process.

## **E24. Community Benefits in Tenders**

Officers must comply with the Council's policy regarding Community Benefits in procurement matters, a copy of which is available on the Procurement intranet pages.

## **E25. Identification of the Relevant Procurement Process**

- Officers are responsible for accurately identifying the value of their procurement at this initial stage.
- The value must be 'aggregated'. This means calculating the value for the whole term of the arrangement including potential extensions or variations.
- Accurate valuation is vital to ensure that the correct procurement process is followed.
- Officers must assess the total Council expenditure on the services, goods or works for the whole period.
- Procurement in consultation with Legal Services can provide advice on how your procurement is classified if over threshold (see E74 – Goods/Services/Works – Part A or Part B).

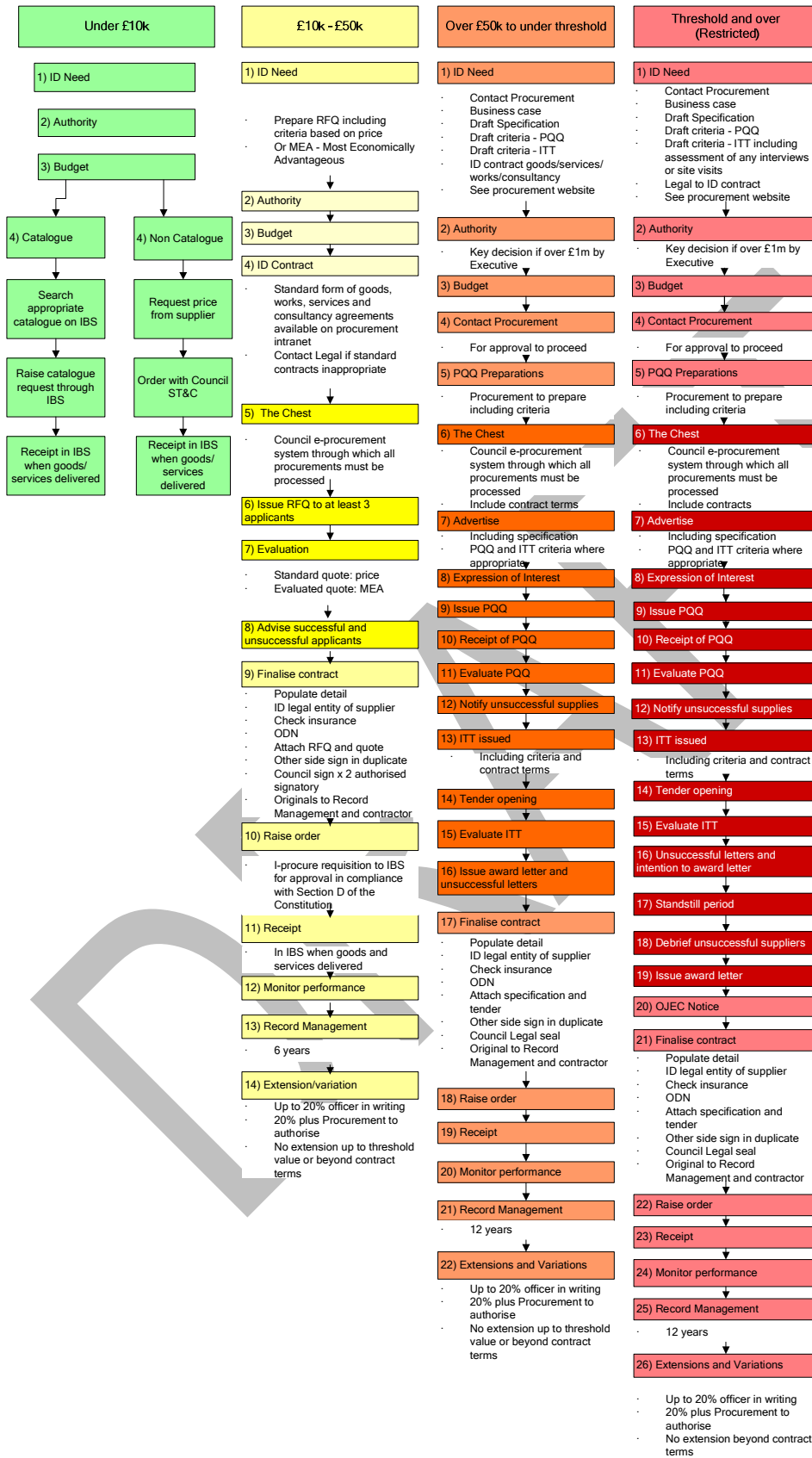
- The table and summary flow charts set out the four different processes.

### Procurement Processes

<b>Value</b>	<b>Under £500 or £500 to £10,000</b>	<b>Over £10,000 to £50,000 (Goods and Services)</b>	<b>Over £10,000 to £150,000 (Works)</b>	<b>Over £50,000 to threshold (Good &amp; Services) Over 150K to threshold (Works)</b>	<b>Threshold and over</b>
<b>Process</b>	Catalogue or Non Catalogue  Comparison of three written quotes if £500 or over  Officers must comply with E26-32	Comparison of five written quotes  Officers must comply with E33-46	Comparison of five written quotes Officers must comply with E33-46	Formal Tender Process  Officers must comply with E47-72	Tender process in accordance with EU rules  Officers must comply with E73-111
<b>Contact for advice</b>	Procurement	Using The Chest (Procurement to advise if required)	Using The Chest Procurement to advise	Procurement to advise	Procurement to advise

# "TO BE AMENDED WHEN FINAL VERSION IS AGREED"

## Procurement Processes



## **LOW VALUE PROCUREMENT**

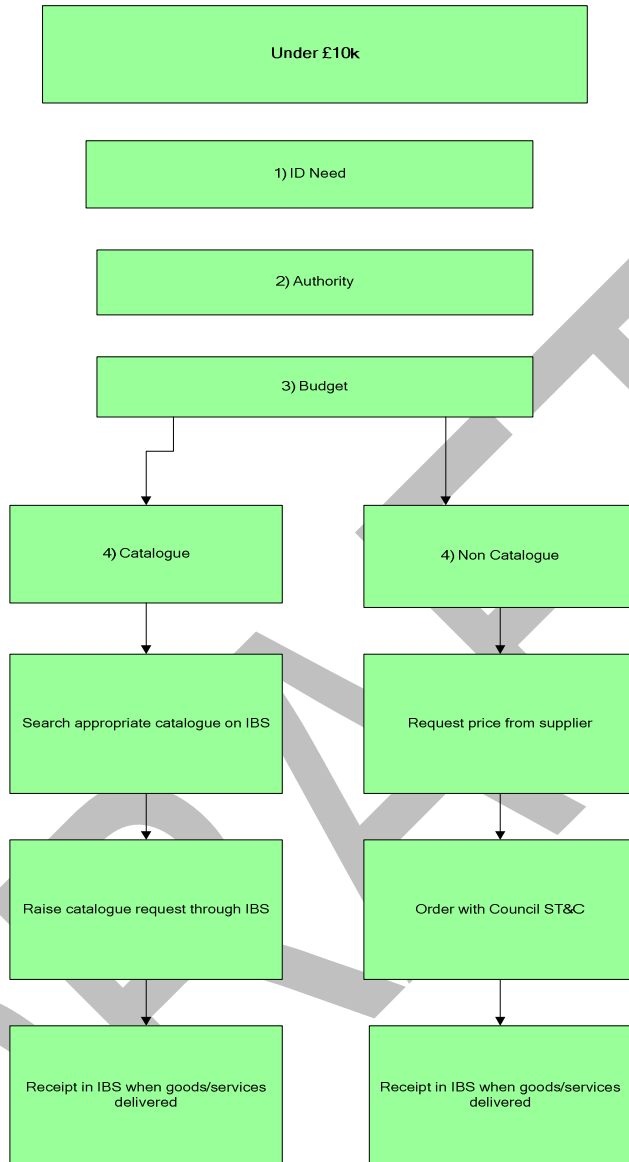
**UNDER £500 FIXED PRICE QUOTE OR CATALOGUE and £500 to £10,000  
FIXED PRICE QUOTE OR CATALOGUE**

### **E26. Summary**

The flow chart below summarises the procurement process for below £500 purchases and those between £500 and £10,000.

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**"TO BE AMENDED WHEN FINAL VERSION IS AGREED"**



## **E27. Electronic Catalogue**

- The Council uses a number of catalogues for purchasing recurrent items.
- If the purchase is below £10,000 in total value Officers must check the catalogues to see if they can be used.
- Catalogues can be accessed via the electronic procurement system.
- Orders are also placed using the electronic procurement system.

## **E28. Non Catalogue (email or telephone quote)**

- If the required goods, works or services are not available via a catalogue then the Officer must obtain at least one email or telephone quote if the purchase is expected to be below £500, or at least three email or telephone quotes if the purchase is expected to be between £500 and £10,000.
- This must be a fixed price and an order must be placed with the Council's standard terms and conditions attached if £500 or over.
- A receipt must be provided when the goods and services are delivered.

## **E29. Council's Standard Terms and Conditions**

- Officers should insist on the application of the Council's standard terms and conditions unless Legal Services provide approval to an exception.
- The standard terms and conditions for procurements below £10,000 are available on the Procurement intranet site and should be attached to all orders if £500 or over.

## **E30. Payments**

Wherever possible all payments must be made in arrears upon satisfactory evidence of performance, receipt of goods or completion of works.

## **E31. Record Keeping**

Contracts of this value must be signed by an authorised signatory in accordance with the relevant Directorate Scheme of Delegation. Records must be kept for a period of 3 years for audit purposes.

## **E32. Extension/Variation/Overspend**

- Officers must not enter into extensions, variations or overspends which singly or cumulatively would extend the value of the contract beyond £10,000 without a prior officer decision notice.
- All extensions, variations and overspends must be authorised in accordance with the Directorate Scheme of Delegation, agreed in writing with the supplier, and be necessary for the successful delivery of the contract or be desirable and provide value for money.

## **MEDIUM VALUE PROCUREMENT 3 WRITTEN QUOTES**

**£10,000 to £50,000 (Goods and Services)**

**£10,000 to £150,000 (Works)**

### **E33. Summary**

Officers must ensure that all procurements start by complying with E6–25 ‘Initial Steps’.

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# "TO BE AMENDED WHEN FINAL VERSION IS AGREED"

£10k - £50k

1) ID Need

- Prepare RFQ including criteria based on price
- Or MEA - Most Economically Advantageous

2) Authority

3) Budget

4) ID Contract

- Standard form of goods, works, services and consultancy agreements available on procurement intranet
- Contact Legal if standard contracts inappropriate

5) The Chest

- Council e-procurement system through which all procurements must be processed

6) Issue RFQ to at least 3 applicants

7) Evaluation

- Standard quote: price
- Evaluated quote: MEA

8) Advise successful and unsuccessful applicants

9) Finalise contract

- Populate detail
- ID legal entity of supplier
- Check insurance
- ODN
- Attach RFQ and quote
- Other side sign in duplicate
- Council sign x 2 authorised signatory
- Originals to Record Management and contractor

10) Raise order

- I-procure requisition to IBS for approval in compliance with Section D of the Constitution

11) Receipt

- In IBS when goods and services delivered

12) Monitor performance

13) Record Management

- 6 years

14) Extension/variation

- Up to 20% officer in writing
- 20% plus Procurement to authorise
- No extension up to threshold value or beyond contract terms



### **E34. Quotes – Price Only**

- For medium value procurements Officers must seek at least five written quotes to ensure best value and fair competition.
- For goods and services officers can obtain these directly via The Chest on a restricted or open basis.
- For works officers must firstly obtain written approval from Procurement prior to obtaining any quotes.
- A RFQ (Request for Quotes) must be prepared setting out what goods or services or works are required. Outcomes must be clearly identified. The RFQ must include the relevant contractual terms and conditions and is issued to at least five suppliers (where possible).
- Quotes – price only are evaluated on price alone.
- Quotations for construction works shall only be invited from contractors who are members of Constructionline and the Safety Scheme in Procurement (SSIP). If quotations are invited on a restricted basis, at least six contractors shall be invited to quote to be selected in accordance with the Council's policy on the procurement of such contracts (available on the Procurement website).

### **E35. Quotes – Price and Quality**

- If the goods, services or works required need to be assessed on the basis of more than just price, elements of quality can be assessed by utilising an evaluated quote. A decision to evaluate on factors other than just price must be made before the RFQ is issued.
- Procurement can advise on the process and setting evaluation criteria based on the most economically advantageous quote. There is a standard evaluation model available on the Procurement website..
- As with the Quotes – price only, the RFQ must be prepared including the contractual terms. This must be issued to at least five suppliers.

### **E36. The Chest**

- The Chest is the Council e-procurement software, which is used for procurement activities over £10,000.
- The web based software facilitates online tendering to ensure access to a wide spectrum of suppliers, process efficiency, standardisation and compliance.
- Officers must use the system for all procurement with a value of over £10,000 unless the Head of Procurement has provided written consent for an exception.
- The elements of the procurement process carried out using The Chest are highlighted on the procurement process summary charts.

### **E37. Advertising**

Although advertising is not required for procurement activities under £50,000, Procurement can advise on the need to advertise to obtain an appropriate level of interest and competition.

### **E38. Council's Standard Form Contracts**

- Standard contracts are available for goods, services, and IT.
- These standards are available on the Procurement intranet site along with guidance on their use.
- Industry standards such as PSPC, NEC, JCT, JClI, ACE, RIBA & ICE are used with Council's additional standard additional clauses covering freedom of information and other local government specific issues. These additional clauses are available from Legal Services. Officers must ensure that the RFQ sent out to potential suppliers includes the correct form of contract or refers to the correct industry standard.
- Legal Services can provide bespoke terms if none of the standard contracts are appropriate. Officers must request advice before commencing the procurement process.
- Consent of Legal Services is required if the Council's standard terms and conditions or the industry standards with the standard Council additions are not being used or are being varied. Heads of Services are responsible for ensuring that industry standard documents are kept up to date and that Legal Services are provided with updates.
- Officers must ensure that the RFQ states that by quoting for work the applicant is accepting the proposed terms.

### **E39. Evaluation of Quotes**

- Quotes – price only are evaluated on price alone. Usually the lowest within budget quote will be accepted unless a quote is rejected as non compliant with the Council's requirements as set out in the RFQ.
- Quotes based on both price and quality must be assessed to identify the most economically advantageous quote using simple pre-disclosed criteria such as delivery, time and quality. The within budget quote with the best score will be accepted unless there are exceptional circumstances and Internal Audit consents.
- The Council is not obliged to accept any quote and this must be stated in the RFQ.
- The RFQ and quote must not contain conflicting information. The Officer is responsible for ensuring that the quote fully complies with the RFQ and for resolving any ambiguities before a quote is accepted.

### **E40. Accepting Quotes**

- Quotes will usually be received and opened by Legal Services electronically using The Chest system.
- Written quotes can be received and opened by Legal Services or Service Department in the presence of a member of the Council or officer from another Department or another officer from the Service Department (if below £10,000)
- Officers are not obliged to accept any quote. If none of the quotes received are acceptable then further quotes may be sought.
- Officers need to ensure that they have the appropriate authority and budget in place to accept a quote as set out in E13 and E15.

## **E41. Advising Applicants of Outcome**

The successful and unsuccessful applicants must be advised of the outcome of their quote. The Chest will facilitate this correspondence by way of an email.

## **E42. Finalising the Contract**

- Officers are responsible for finalising the contract. If over £50,000 in value, this will be done by Legal Services.
- Officers must confirm the legal entity of the supplier. The Officer must check if the supplier is a limited company (by way of a Companies House Search), a partnership, an individual, trust, association, charitable incorporated organisation or industrial and provident society.
- The Officer must populate the contract as detailed in the contracts register.
- The supplier must meet the financial standards set out in the PQQ document.
- Officers must obtain and retain certification of the supplier's insurance at the appropriate level for the full duration of the contract and beyond if appropriate.
- The RFQ and quote must be attached to and form part of the contract. Any clarifications, additional plans or project documents forming part of the contract must also be incorporated. The Officer must ensure that there are no conflicts between these documents.
- If the RFQ supersedes all other attachments this must be stated in the contract.
- Payments must be paid in arrears upon the production of satisfactory evidence of performance. Where the total amount payable under the contract cannot be ascertained the contract must include a clear mechanism for calculating the amounts due, for example by reference to a bill of quantities or schedule of rates and the maximum amount payable must be stated.

## **E43. Signing**

- Contracts must be signed in duplicate by the supplier and left undated. One Council authorised signatory must then sign on behalf of the Council. The contracts are dated when the last signatory has signed.
- For contracts with a value of £50,000 or below the authorised signatories will be as set out in the Scheme of Delegation. These signatories will be from within the relevant service but contracts above £50,000 must be signed by an authorised signatory in the Legal Section.
- **Contracts must be signed before work is started to ensure the Council's position is protected. Making payments before the contract is signed is a breach of these rules and may result in disciplinary action. The only exception to these requirements is where the Chief Executive, Strategic Director and Head of Legal and Member Services agree that the Council's interests would be prejudiced by compliance and the contract can be evidenced in another way (eg by correspondence).**

#### **E44. Record Keeping**

- One original signed contract is returned to the supplier for their records.
- The Officer is responsible for ensuring that the contract is added to the contract register maintained by Procurement, and this is done by Legal Services if over £50,000 in value.
- All records must be kept for 12 years from the contract start date.

#### **E45. Performance Monitoring**

- For every contract let by the Council, the Head of Service is responsible for ensuring there is a named officer or officers who is/are responsible for monitoring;
  - performance;
  - compliance with the contract specification and conditions;
  - user satisfaction
  - risk management;
  - payments to the contractor;
  - costs;
  - arrangements for re-letting.
- The extent of performance monitoring should reflect the value, risk and nature of the contract.
- Outcomes are measured against the objectives stated in the business case.

#### **E46. Extension/Variation/Overspend**

- The relevant Head of Service must not enter into extensions, variations or agree overspends which cumulatively or singly would extend the value of the contract beyond the original approved budget by more than an additional 20% without the approval of the Head of Procurement. A business case will be required to obtain this approval. Evidence of such approval must be recorded in writing.
- In order to monitor contracts the Head of Procurement will keep a record of such approvals.
- All extensions, variations and overspends must be agreed in writing by both parties and will only be possible under the existing contract if provided for within the terms of the contract and are necessary for the successful delivery of the contract or desirable, affordable and provide value for money.
- The budget to cover any extension must be authorised in writing prior to the extension/variation in accordance with the Scheme of Delegation.
- If there is no provision within the contract terms for extension legal advice must be sought.
- Any variation which will substantially vary the services or works being provided under the contract must be approved by the Head of Procurement.

## **HIGH VALUE PROCUREMENT TENDER PROCESS**

**£50,000 TO OJEU THRESHOLD (Goods and Services)**

**£150,000 to OJEU THRESHOLD (Works)**

### **E47. Summary**

Officers must ensure that all procurements start by complying with E6–25 ‘Initial Steps’.

DRAFT

**"TO BE AMENDED WHEN FINAL VERSION IS AGREED"**

Over £50k to under threshold

**1) ID Need**

- Contact Procurement
- Business case
- Draft Specification
- Draft criteria - PQQ
- Draft criteria - ITT
- ID contract goods/services/works/consultancy
- See procurement website

**2) Authority**

- Key decision if over £1m by Executive

**3) Budget**

**4) Contact Procurement**

- For approval to proceed

**5) PQQ Preparations**

- Procurement to prepare including criteria

**6) The Chest**

- Council e-procurement system through which all procurements must be processed
- Include contract

**7) Advertise**

- Including specification
- PQQ and ITT criteria where appropriate

**8) Expression of Interest**

**9) Issue PQQ**

**10) Receipt of PQQ**

**11) Evaluate PQQ**

**12) Notify unsuccessful supplies**

**13) ITT issued**

- Including criteria and contract terms

**14) Tender opening**

**15) Evaluate ITT**

**16) Issue award letter and unsuccessful letters**

**17) Finalise contract**

- Populate detail
- ID legal entity of supplier
- Check insurance
- ODN
- Attach specification and tender
- Other side sign in duplicate
- Council Legal seal
- Original to Record Management and contractor

**18) Raise order**

**19) Receipt**

**20) Monitor performance**

**21) Record Management**

- 12 years

**22) Extensions and Variations**

- Up to 20% officer in writing
- 20% plus Procurement to authorise
- No extension up to threshold value or beyond contract terms

#### **E48. Process**

- Officers must contact Procurement at the commencement of all high value procurement activities to agree the appropriate procurement process which will ensure value for money and adequate competition.
- A tender process usually contains 3 main stages, pre-qualification to produce a shortlist (by way of a Prequalification Questionnaire 'PQQ'), tender and evaluation. All steps in the process are set out in the summary flow chart.
- Procurements of this value can take a minimum of 3 months to complete and Heads of Services and Officers need to ensure that they set aside adequate time and resources.
- Quotations for construction works shall only be invited from contractors who are members of Constructionline and the Safety Scheme in Procurement (SSIP). If quotations are invited on a restricted basis, at least six contractors shall be invited to quote to be selected in accordance with the Council's policy on the procurement of such contracts (available on the Procurement website).

#### **E49. Specification Drafting**

- The Officer is responsible for drafting a clear and robust specification for all high value procurements.
- The specification must set out exactly what the Council requires and timescales for delivery. The specification will form a crucial part of the contract.
- Where variants are permitted the Officer must set out minimum requirements.
- If the Officer requires suppliers to propose solutions for delivery this must be specified and criteria designed to assess proposals.
- Any reference to British Standards must be followed by the words 'or equivalent'.
- Guidance notes are available from the procurement toolkit.

#### **E50. Setting Evaluation Criteria**

- The way in which tenders will be evaluated must be properly thought out and documented before the start of any procurement process.
- Evaluation criteria are the basis on which scores are given to assess responses. Procurement can advise on setting criteria so responses can be effectively assessed.
- Procurement with the support of Officers are responsible for ensuring that criteria are fully disclosed at the PQQ and ITT (Invitation to Tenderers) stage.
- PQQ criteria assess only backward facing issues such as financial standing, experience, references, expertise and technical capacity. They must not assess how the contract will be delivered.
- Tender evaluation criteria are assessed on:
  - price only or

- MEAT (Most Economically Advantageous Tender)
- To avoid complaints Officers must ensure that criteria at the tender stage are forward facing. This means that they only consider how interested parties could provide the goods/works/services required and not their past experience or references.
- All criteria including sub-criteria and weightings must be fully disclosed.
- In unusual circumstances where it is not possible to establish weightings criteria must be set out in their order of importance.
- If interviewing is envisaged Officers must explain as part of the criteria how the interviews will be assessed.
- Setting clear and transparent criteria is essential for the success of a tender process and to avoid expensive and time consuming challenges. Procurement are responsible for ensuring transparent and fair evaluation criteria are established at the outset and followed during the selection process.
- Criteria relating to quality must be pertinent to the contract.

### **E51. Form of Contract**

Officers must identify the form of contract at the initial stages of the procurement in accordance with E16.

### **E52. Authority and Budget**

At the outset of a procurement process the Officer must ensure that the budget and authority are in place for the project in accordance with E13 and E15.

### **E53. Procurement**

Officers must contact Procurement at the commencement of all high value procurement activities for authority to proceed from the Head of Procurement. Written evidence of consent must be recorded for audit purposes.

### **E54. PQQ Preparation**

Procurement will assist Officers in preparing the PQQ for use in short listing applicants. The standard on line PQQ should be used unless Procurement state otherwise and agree amendments or additions.

### **E55. The Chest**

- Details of The Chest are set out at E36.
- All tenders will be processed using The Chest unless an exception is approved by the Head of Procurement.
- Steps to be completed using The Chest are highlighted in dark orange on the summary flow chart.



## **E56. Advert**

- In order to comply with the aims of these rules, specifically the need for best value, non discrimination and fair competition, Officers must ensure that notices of invitations to tender are published appropriately.
- As a minimum, publication must take place on The Chest. Additional advertising to attract the appropriate level of interest may be required in consultation with Procurement.
- Electronic notices on The Chest should include a copy of the, PQQ and require its completion where applicable.

## **E57. Expressions of Interest**

Expressions of interest where required will be received electronically using The Chest.

## **E58. Issue PQQ**

Procurement will issue the PQQ electronically using The Chest.

## **E59. Receipt of PQQ**

Procurement will receive the PQQ electronically using The Chest.

## **E60. Evaluate PQQ**

- Procurement and the Officer(s) that are part of the evaluation team are responsible for evaluating the PQQ in line with the criteria set. Clear records must be kept of all assessment.
- Once a supplier has been selected through the PQQ stage they are deemed suitable to undertake the contract and they cannot be failed on the same criteria at the tender stage.
- The Head of Finance shall assess the financial standing of a contractor.
- Guidance on evaluation is available from the procurement toolkit.

## **E61. Lack of Competition**

- If fewer than five suppliers meet the selection criteria consideration should be given as to whether continuing with the process will achieve a competitive price, value for money and quality of services. A further advertisement may be required.
- Procurement advice must be sought before a decision is made by the Head of Service on whether to continue with fewer than five potential tenderers.

## **E62. Notify Unsuccessful Suppliers at PQQ Stage**

Procurement will notify unsuccessful suppliers electronically using standard templates. Appropriate feedback will be made available to suppliers by Procurement upon request.

### **E63. ITT Issued**

- Procurement will issue the ITT electronically using The Chest to all those who have been successful at the PQQ stage.
- The ITT must include;
  - the time, date and internet address for submission of tenders
  - information the supplier must provide
  - timescales for the project
  - the criteria for award
  - the contract documents
  - method for dealing with queries during the tender period
- The ITT must state that the Council is not bound to accept the lowest or any tender.
- Amendments to the ITT may be made via The Chest.
- The ITT must set out how errors in tenders will be dealt with using one of the following two ways;
  - the tenderer shall be given details of the error(s) found during the evaluation and shall be given the opportunity to confirm without amendment or withdraw the tender; or
  - amending the tender to correct genuine error(s) certified as such by the Heads of Finance and Procurement provided that in this case, apart from these genuine errors, no other adjustment, revision or qualification is permitted.
- The ITT must state that by submitting a tender the tenderer agrees to the Council's proposed contract terms.

### **E64. Tender Receipt**

- Tenders must be submitted as instructed in the tender documentation. Non compliance with this requirement may result in the tender not being considered. The Head of Procurement must decide.
- Tenders received after the date and time indicated for the receipt of tenders will not normally be considered except with the agreement of the Head of Procurement. Such tenders will be opened and the tenderer advised that they have not been accepted unless there are exceptional circumstances which explain and excuse the late receipt certified by the Heads of Procurement and of Legal and Member Services.
- Tenders will be submitted electronically using The Chest unless the Head of Procurement authorises an exception in writing (eg if the E sourcing portal is unavailable).
- Hard copy tenders must be stamped with the date and time upon receipt.

### **E65. Tender Opening**

- The tenders must be opened by Legal Services. This will be an electronic process unless an exception in writing has been obtained from the Head of Procurement.
- A record of all tenders received will be kept and will include;
  - service name
  - contractor's names

- tender value
- date
- reason for any disqualifications
- name of those who were invited but did not submit a tender
- Any request for an extension to a tender period must be made no later than 3 working days before the tender closing date and agreed by the Head of Procurement. If an extended date is permitted all tenderers must be advised.

#### **E66. Evaluate ITT**

- The tenders must be evaluated using the criteria published.
- Clear written records must be kept of the assessment process (this process is automatic when using The Chest).
- The Council is not bound to accept the lowest or any tender.
- Any errors in Tenders shall be dealt with as set out in the ITT.
- Negotiation is forbidden.
- No valid tender will be excluded without the approval of the Head of Legal and Democratic Services.
- After the contract has been awarded (subject to contract) officers may meet the successful contractor to exchange information before the contract has been executed. A note must be made of that meeting by the relevant Head of Services which should be exchanged with the contractor and sent to Legal Services before the contract is executed, together with confirmation that the outcome of the meeting has not altered or added to the terms of the proposed contract.

#### **E67. Issue Award and Unsuccessful Letters**

- Procurement will notify suppliers of the outcome of the evaluation electronically using standard documentation.
- Where timescales allow, a voluntary standstill period of 10 days between decision to award contract and the actual contract award, will be implemented as best practice.

#### **E68. Finalise Contract**

- Legal Services are responsible for producing the contract document based on the draft issued as part of the ITT.
- The legal entity of the supplier must be clarified to Legal Services by the Service Department. The contracts must be issued in the name of a limited company (with reference to the company number), a partnership, an individual, a trust, an association a charitable incorporated organisation or an industrial and provident society.
- Legal Services are responsible for checking that the chosen supplier has provided up to date certification of insurance for the value and type required in the contract.
- The Officer must ensure that authority is in place to enter into the contract in the form of an ODN (Officer Decision Notice), Members Decision Notice or Executive minute.

- Legal Services must ensure that the specification and tender are compliant with the terms and conditions as these form the detail of the contract. Officers must ensure that there are no conflicts between these documents.
- All contracts must include clear provisions as to the amounts and timing of payments due under the contract. Payments should be paid in arrears upon the production of satisfactory evidence of performance. Where the total amount payable under the contract cannot be ascertained the contract must include a clear mechanism for calculating the amounts due, for example by reference to a bill of quantities or schedule of rates, and the maximum amount payable must be stated.
- Approval of the relevant Head of Service and the Head of Procurement is required if payment is required in advance or partially in advance as necessary for provision of the service or in line with statutory guidance. Evidence of such approval and the reasons for it must be recorded on an ODN.

#### **E69. Signing/Sealing**

- All contracts with a value of £100,000 or over will be sealed as a Deed by Legal Services. Contracts between £50,000 and £100,000 in value shall be signed by an authorised signatory from Legal Services.
- When the steps for finalising the contract are complete the contract can be issued to the supplier for execution as a Deed or for signature (as appropriate).
- The supplier will seal or sign the contracts in duplicate but leave them undated.
- Legal Services must notify Procurement, Finance and the relevant Head of Service when the contract has been executed.
- The contract will be dated when the Council's seal is affixed.
- Electronic signatures may be used in accordance with the Electronic Signatures Regulations 2002, provided the security arrangements have been approved by the relevant Director.
- **Contracts must be signed or sealed before work is started to ensure incorporation of terms. Making payments before the contract is sealed is a breach of these rules and may result in disciplinary action. The only exception to this requirement is where the Chief Executive, the Director of Finance and Head of Legal and Member Services agree that the Council's interests would be prejudiced by compliance and the contract can be evidenced in another way (eg by correspondence).**

#### **E70. Record Keeping**

- Legal Services will keep the original contract for a minimum period of 12 years.
- The relevant Officer is responsible for ensuring that all records relating to the tender are kept for six years including;
  - all tenders received
  - notes of any telephone conversations with tenderers

- notes of any meeting regarding selection and application of criteria
  - information provided to tenderers
  - decisions made together with reasons
- Officer's records of a tender in electronic form are acceptable
  - Procurement are responsible for ensuring that the contract is added to the contracts register.

### **E71. Performance Monitoring**

- For every contract let by the Council, the Head of Service is responsible for ensuring there is a named officer/s who is/are responsible for monitoring;
  - performance
  - compliance with the contract specification and conditions
  - user satisfaction
  - risk management
  - payments to the contractor
  - costs
  - arrangements for re-letting
- The extent of performance monitoring should reflect the value, risk and nature of the contract.

### **E72. Extension/Variation/Overspend**

- The relevant Head of Service must not enter into extensions, variations or overspends which are outside the scope of the procurement, or would cumulatively or singly extend the value of the contract by an additional 20% or more, in excess of the original budget without the approval of the Head of Procurement. A business case will be required to obtain this approval. Evidence of such approval must be recorded in writing.
- In order to monitor, the Head of Procurement will keep a record of such approvals.
- No extension, variations or overspends that result in the value of the contract exceeding the European procurement threshold will be entered into (see E16). Legal advice must be obtained if the aggregate contract value is close to the European procurement threshold.
- The service can extend or vary a contract provided;
  - there is provision within the contract to extend (and this has not already been utilised to its full extent)
  - the budget has been confirmed in writing
  - thresholds are not exceeded
  - best value can be demonstrated
  - authority is recorded in writing by officer decision and any necessary approval by Head of Procurement that is required
  - Legal Services draft any Deed of Variation (if required)
- If there is no provision within the contract terms for extensions Legal advice must be sought.

- Legal advice must also be obtained if early termination of a contract is required.

## EUROPEAN PROCUREMENT

### THRESHOLD AND OVER

#### E73. European Procurement Principles

- The Public Contract Regulations 2006 (as amended) (the regulations) apply to above threshold contracts for the supply of goods, services and works.
- Current thresholds are set out in E16.
- The regulation principles of **transparency, non discrimination and equality** are obligations that apply to all procurements and must be complied with at all times.

#### E74. Categories of European Procurement:

##### Works/Supplies/Service

##### Part A or Part B

- The Public Contract Regulations define various types of procurement and the processes they must follow. Procurement can assist officers in categorising their purchases as works, services or supplies and as Part A or Part B so the correct process is followed.

#### E75. Part A

For Part A priority services the Public Contract Regulations 2006 apply in full and must follow the prescriptive procedures and timescales set out in the regulations to ensure an open market and competition between member states.

- Part A priority services include various categories including consultancy, accountancy & IT.
- There are four procedures, one of which must be utilised for all over threshold Part A procurements.
- The four procedures are;
  - restricted
  - open
  - negotiated and
  - competitive dialogue.
- The **restricted and open procedures are most commonly used** and Procurement can advise on the application of these processes. These rules focus on these frequently used procedures.
- The **negotiated and competitive dialogue procedures** may only be used in **exceptional circumstances** and **with the approval of the Head of Legal and Member Services and Head of Procurement**. These procedures are only used for major and complex projects. The processes

for these procedures are not set out within the rules. The Head of Legal and Member Services shall not only consent to the commencement of these procurements but will advise throughout the process.

- The competitive dialogue process is very resource intensive and time consuming and its use must be justified following an options appraisal of this and alternative procedures.

#### **E76. Part B**

- Part B residual services are those which the EU considers would largely only be of interest to bidders located within the member state where the contract is to be performed and are therefore subject to a lesser regime.
- Part B services include social services, health, education, recreational and cultural services.
- A Senior Procurement Manager in consultation with Legal Services must approve the allocation of a procurement to the Part B regime.
- Wherever possible Part B procurements should be run in line with the full regime to achieve the Council's aims (E1). The Council recognises that this may not always be possible or appropriate. If a Senior Procurement Manager in consultation with Legal Services agree, a less restrictive regime can be applied in compliance the regulations.

#### **E77. Prior Information Notice**

At the beginning of each financial year Procurement may publish a Prior Information Notice (PIN) in the OJEU listing the contracts or frameworks it expects to procure during that financial year. Chief Officers are responsible for informing Procurement in advance of upcoming procurements so Procurement can advise on incorporation into the PIN.

#### **E78. Electronic Auctions**

Electronic auctions will only be permitted following the written consent of the Head of Procurement and the Head of Legal and Member Services.

#### **E79. Service Concession Contracts**

- A Service Concession Contract is defined by regulation 46 of the Public Contract Regulations 2006 as a contract where a chosen contractor is given the opportunity to provide a service for the benefit of the public and the right to exploit the market place in return for taking on the risk of providing the services.
- The principles of the regulations; transparency, openness and non discrimination apply to Service Concession Contracts but the full regime in relation to competition does not.
- In order to minimise risk to the Council a Service Concession Contract can only be utilised by the Council following the consent of the Head of Legal and Democratic Services and the Head of Procurement.
- Legal must be involved throughout the process to ensure an appropriate and bespoke contract is drawn up.

## **E80. Remedies for Breach of the Regulations**

The consequences for breaches of the regulations for over threshold procurement are significant and include;

- setting aside of contracts following a declaration of ineffectiveness
- financial penalties
- awards of damages and costs to successful challengers
- compensation to the contractor for repudiatory breach of contract
- costs of delays in provision of the required goods/services/works
- costs of further procurement

Officer compliance is therefore essential.

## **E81. Timescales**

- Procurements over threshold can take a minimum of 4 months and sometimes over 18 months to complete depending on complexity.
- Heads of Services and Officers need to ensure that they set aside adequate time and resources. Procurement can advise on exact timescales depending on the procurement procedure.
- An accelerated restricted procedure is available for use in very limited circumstances with the consent of Legal Services.

## **E82. Involving Procurement**

- Procurement must be contacted before commencing any above threshold procurement activity.
- All above threshold procurement must be managed by Procurement in conjunction with the Officers.

## **E83. Abandonment**

The consent of Legal Services should be obtained before abandonment or recommencement of an above threshold procurement to ensure appropriate procedures and assessments of risk are followed.

## **RESTRICTED PROCEDURE**

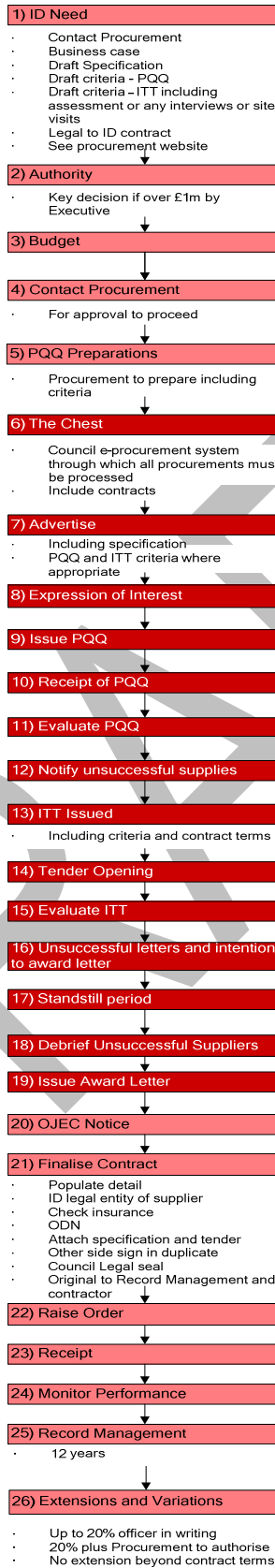
### **E84. Restricted Procedure Background Summary Chart**

The restricted procedure is the most frequently used process for above threshold procurements. The initial steps set out in E6-25 apply.



# "TO BE AMENDED WHEN FINAL VERSION IS AGREED"

## Threshold and Over (Restricted)



## **E85. Identification of Need**

- The restricted procedure is similar to the high value tender process and has three main stages;
  - Short listing applicants by way of a PQQ (prequalification questionnaire)
  - tender and
  - evaluation.
- All steps in the process are set out in the summary flow chart.
- Procurement must advise whether this is the appropriate process for the proposed project and the relevant timescales.
- The importance of drafting a robust specification increases with the value of the contract. The specification must set out what the Council needs and Officers are responsible for complying with E49 Specification drafting.
- Procurement with the assistance of the Officer are responsible for drafting transparent and clear criteria for the ITT and PQQ at this initial stage. E.50 must be complied with and criteria must be proportionate and related to the subject matter.

## **E86. Form of Contract**

Officers must contact Legal Services for advice on the form of contract.

## **E87. Authority and Budget**

The Officer must ensure that the budget and authority are in place for the project in accordance with E13 and E15.

## **E88. Procurement**

Authority to proceed must be obtained from Procurement and written evidence of this consent must be recorded for audit purposes.

## **E89. Prepare PQQ**

Procurement with the assistance of Officers are responsible for preparing the PQQ using as a model the standard PQQ available on the Procurement intranet pages.

## **E90. The Chest**

- Details of The Chest are set out in E36.
- Steps to be completed using The Chest are highlighted in dark red on the summary flow chart.

## **E91. OJEU Notice**

- All above threshold procurements must be published in the OJEU.
- Procurement are responsible for drafting the notice with the assistance of the Officer.

- Procurement are responsible for placing the notice and ensuring that the relevant timescales are complied with.
- Under the standard restricted procedure the last date for receipt of requests to be selected to tender shall be a minimum of 37 days.
- This can be decreased by 7 days to 30 days if the notice is transmitted by electronic means as facilitated by The Chest.
- The timing for receipt of expressions of interest can in the case of emergency be reduced further to 15 days (or 10 days if the process is electronic through The Chest) but to utilise this **accelerated procedure** Legal and Procurement's consent must be obtained in writing and the notice must set out bona fide reasons for the urgency.

#### **E92. Expressions of Interest**

- Expressions of interest should be received electronically using The Chest and within the timeframe set out in the advert.
- Late expressions of interest will only be included in exceptional circumstances and with the consent of the Head of Procurement.

#### **E93. Issue PQQ**

- Procurement will issue the PQQ electronically using The Chest to all interested parties at the same time.
- Procurement will ensure that the PQQ stage complies with the required timescales.

#### **E94. Receipt of PQQ**

- PQQ received after the deadline will not be accepted without the consent of the Head of Procurement and only in exceptional circumstances.

#### **E95. Evaluate PQQ**

- Procurement and the Officer are responsible for evaluating the PQQ in line with the published criteria. Clear records must be kept of all assessment.
- Suppliers may only be excluded from the list of those invited to tender if the directors of the company/firm have been convicted of offences of fraud or dishonesty or unless the bidder fails to satisfy the minimum specified requirements as to the economic standing or technical or professional ability.
- Once an organisation has been selected through the PQQ stage they are deemed suitable to undertake the contract and cannot be failed on the same criteria at the tender stage.
- Only those suppliers that pass the PQQ stage and are short-listed can be invited to tender.

#### **E96. Lack of Competition**

- No fewer than five suppliers should be selected. If fewer suppliers than the number specified in the notice meet the selection criteria at the PQQ

stage consideration should be given as to whether continuing with the process will achieve genuine competition, value for money and quality before any decision is made by the responsible officer to invite tenders from the selected supplier(s).

- A further advertisement may be required. Advice from Procurement must be sought and Procurement must keep a record of such circumstances to ensure that future procurements in the area are advertised sufficiently.

#### **E97. Notify Unsuccessful Applicants at Pre-Qualification Stage**

- Procurement will notify all applicants of the outcome of their PQQ electronically using the templates agreed with Legal Services for this purpose.
- All notifications of rejection must include the reasons for the rejection.

#### **E98. Issue ITT**

- Procurement are responsible for issuing the ITT to all short-listed suppliers at the same time and E.63 applies.
- Suppliers must be given at least 40 days to return tenders under the standard restricted procedure.
- This can be decreased by 5 days to 35 days if the process is electronic through The Chest and all contract documents are available electronically.
- In cases of urgency the **accelerated procedure** can be used following Legal and Procurement's consent and providing bona fide reasons have been set out in the notice. The minimum time limit for receipt of tenders under the accelerated procedure is 10 days.
- Procurement are responsible for applying and complying with the appropriate timescales for the project.

#### **E99. Receipt of ITT**

Procurement are responsible for receipt of ITT's and E64 applies.

#### **E100. Tender Opening**

Legal Services are responsible for tender opening and E65 applies.

#### **E101. Evaluation of ITT**

- Procurement and the Officer are responsible for evaluation of ITT's and E66 applies.
- Compliance with E66 is essential to minimise the risk of challenge from aggrieved suppliers.

#### **E102. Issue Unsuccessful Letters and Intention to Award Letter**

- Procurement will notify all tenderers of the intention to award electronically using the templates agreed with Legal Services for this purpose.
- The letters must include;

- the criteria for award
- the reasons for the decision including the characteristics and relative advantages of the successful tender
- the score obtained by the tenderer to receive the notice
- the score obtained by the successful tenderer (or party to the framework)
- the name of the successful tenderer to be awarded the contract
- a precise statement of when the standstill period is expected to end
- the date before which the contract will not be entered into (or the framework concluded).

### **E103. Standstill Period**

- A contract cannot be entered into or a framework agreement concluded until the end of the standstill period.
- The standstill period is 10 calendar days from the day after issue of the unsuccessful letters and intention to award letter (providing the letters have been sent electronically otherwise the standstill period is 15 days).
- The period will be extended to the next working day if the standstill period ends on a non working day.
- The period ends at midnight so appointment cannot conclude until the next working day.
- Procurement will advise on timescale and compliance with the standstill period.
- When calling off under an existing compliantly established framework a standstill period is recommended but not required.

### **E104. Further Feedback to Unsuccessful Contractors**

- If requested by an unsuccessful supplier Procurement will provide further feedback.
- Procurement will keep a log of all requests for further information, complaints and challenges to inform the continual improvement of the Council's procurement processes.
- Procurement will refer all potential challenges to Legal Services.
- If a complaint is received the award of the contract may be suspended (in addition to the standstill period) . The contract may not be concluded within 10 days of the response to the formal complaint being issued. The contract must not be awarded pending the outcome of a review of the complaint. Officers and Procurement must seek Legal advice on the response to the complaint and on the application of the suspension period. Every case must be treated on its merits.

### **E105. Issue Award Letter**

- Providing there are no outstanding issues Procurement will issue the award letter following the end of the standstill period.

### **E106. Finalise Contract**

Officers are responsible for ensuring compliance with E68.

### **E107. Signing/Sealing**

Officers are responsible for ensuring compliance with E69.

### **E108. OJEC Contract Award Notice**

Procurement are responsible for issuing the contract award notice expediently and not later than 48 days from award.

### **E109. Record Keeping**

- Officers are responsible for ensuring compliance with E70.
- Procurement are responsible for compiling and submitting an annual report to the Department of Communities and Local Government concerning the Contracts and Framework Agreements awarded during the preceding year under the regulations for transmission to the European Commission.

### **E110. Performance Monitoring**

The Head of Service must ensure that there is a named Officer responsible for compliance with E71.

### **E111. Extension/Variation/Overspend**

- The relevant Head of Service must not enter into extensions, variations or overspends which are within the scope of the original procurement but would extend the value of the contract singly or cumulatively by an additional 20% or more beyond the approved budget without the approval of the Head of Procurement. A business case will be required to obtain this approval. Evidence of such approval must be recorded in writing.
- In order to monitor and provide appropriate training the Head of Procurement will keep a record of such approvals.
- The Service can extend or vary a contract provided;
  - there is provision within the contract to extend (and this has not already been utilised to its full extent)
  - the budget has been confirmed in writing
  - authority is recorded in writing and
  - Legal Services prepare the documentation to record the terms of the extension or variation (if necessary depending upon the provisions of the contract).

- If there is no provision within the OJEU contract notice or in the contract terms for extensions, legal advice should be sought.
- Legal advice must be sought on the need to re-procure if changes amount to a significant or material alteration to the contract advertised or there is a proposed change to a named subcontractor.

## **OPEN PROCEDURE**

### **E112. Open Procedure**

- This is a straightforward procedure. Procurement can advise on when its use is appropriate.
- The procedure differs from the standard tender process and restricted procedure as there is no pre-qualification stage.
- The steps on the flow chart;
  - 1. Identify Need
  - 2. Authority
  - 3. Budget
  - 4. Contact Procurement
  - 6. The Chest
  - 7. Advert
  - 13. Issue ITT and
  - 14. to 26.

will apply. Stages 5 and 8-12 are not applicable as they relate to the PQQ which is excluded from an open procedure.
- Officers are responsible for ensuring that they are familiar with all steps required for the open process and must apply E86-88, E90-92, E99-111.
- The procedure is as follows:
  - Publish contract notice in official journal
  - Evaluate all tenders received in line with published criteria (no negotiation with bidders allowed)
  - Issue a notification of award and feedback to unsuccessful applicants
  - Following a standstill period award contract
  - Publish award notice within 48 days of award.
- No sifting of bidders in a preliminary stage is permitted.
- All bids are considered unless the bidder is ineligible due to the directors of the company/firm having been convicted of offences of fraud or dishonesty or unless the bid fails to satisfy the minimum specified requirements as to economic standing or technical or professional ability.
- The contract documentation must be included in the Invitation to Tender (“ITT”) sent to bidders.
- Timescales for reply following publication of notice are;
  - at least 52 days in the standard procedure
  - this timescale can be reduced by 7 days to 45 days if the contract notice is submitted by electronic means via The Chest

- a further reduction of 5 days is available if all the contract documents are available electronically from the date of the publication of the advert.
- If despatch of the ITT is not by electronic means, the ITT must be despatched to a bidder within 6 days of the request for the ITT.
- Extra time must be allowed to bidders if the ITT is not despatched in accordance with the rules and if it is necessary for bidders to inspect a site or premises or documents relating to the contract documents.
- As with the restricted procedure Procurement are responsible for running open procurement with the assistance of the Officer.

## **PFI/PPP**

### **E113. Background**

- Private finance initiative (PFI) provides a way of funding major capital investments, without immediate recourse to Council budgets. Private consortia, usually involving large construction firms, are contracted to design, build, and in some cases manage new projects. Contracts typically last for 30 years, during which time the building is rented by the Council. Competitive Dialogue is the prescribed method of procurement for such projects.
- Public-private partnerships (PPPs) describes a Council or private business venture which is funded and operated through a partnership of the Council and one or more private sector companies. The partnership forms the basis of the PFI funding public infrastructure projects with private capital.

### **E114. Consent of Legal Services and Procurement**

The Head of Legal and Member Services and the Head of Procurement must be involved at the concept phases of any proposed PFI/PPP ideas and must have continual involvement throughout the project.

### **E115. Executive Authority**

Before proceeding with a PFI/PPP Executive authority is required.

## **SALE OF GOODS/ASSETS**

### **E116. Sale of Council Goods or Assets**

- When selling Council goods or assets Officers must comply with the aims of these rules (E.1) specifically the need to achieve best value, ensure transparency, openness, non discrimination, probity and accountability.
- Appropriate authority under the relevant scheme of delegation for the sale must be evidenced on an ODN before commencing the sale process.
- 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 under £50,000	Sale with value over £50,000
Minimum of 3 offers required wherever possible	Procurement to advise on the need to advertise to achieve an appropriate level of interest	Advertise sale appropriately

- Procurement can advise officers on compliance regarding sales if required.

## WAIVING THE RULES

### E117. Compliance

- These rules apply to the purchase and disposal of all goods, services or works and failure to comply **maybe considered a breach of the Officer Code of Conduct and may result in disciplinary action** .
- An Officer who fails to follow these 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.

### E118. Officer Decision Notice

- Where an Officer intends to seek an exemption or exception to these rules as they apply to all procurements they shall arrange for consent to be obtained in writing.
- Such consent shall be evidenced on an Officer Decision Notice signed by the appropriate Officer/s depending on the value of the procurement as set out in the table below **prior** to the start of the procurement process.

The notice must be completed by the procuring Officer quoting which of the exemptions or exceptions listed below apply and why. The notice must be checked by Legal Services and Procurement prior to signing by the authorised Officer/s.

**E119. Summary Table: Officers authorised to approve waiving of the Contract Procedure Rules**

<b>Under £10,000</b>	<b>Under £50,000</b>	<b>£50,000 and over</b>	<b>Over threshold</b>
Senior Procurement Officer	Procurement Manager	Approval of Head of Procurement and Head of Legal and Member Services or authorised representative	Unable to waive unless exempt from the Regulations and the Chief Executive, Head of Legal and Member Service and the Head of Procurement provide prior approval

**E120. Exemptions and Exceptions**

Consent to waiving the rules will only be approved in exceptional circumstances and only when the EU Procurement regulations do not apply.

**Exemptions:** contracts that can be exempt from the application of the regulations and these rules following consent from the Chief Executive, Head of Legal and Member Services and the Head of Procurement are;

- Contracts relating solely to the acquisition or disposal of an interest in land and buildings
- Call-offs under framework agreements, providing procedures are adopted which are broadly equivalent to these rules and compliant with national and EU legislation
- transactions conducted by the Head of Finance in respect of dealing in the money market or obtaining finance for the Council
- contracts awarded to sole suppliers because of exclusive rights
- Employment contracts (exempt unless otherwise agreed by the officers specified above)

**Exceptions**

Requests to waive these rules for under threshold contracts may be authorised in the following circumstances following a robust audit;

- goods, services or execution of works are obtainable only from one source or contractor and there is no reasonably satisfactory alternative;
- compatibility issues such that procurement from another source would be uneconomic given the investment in previous infrastructure;

- a waiver of the rules would be in the interests of the Council, be lawful, and provide value for money;
- where there is a legal requirement to contract with a particular supplier.

#### **E121. Records of Waiver**

All such exemptions or exceptions should be recorded by Procurement in the Contract Procedure Rules Exceptions Register and be available for inspection as required. All original Officer Decision Notices evidencing waiving of the rules must be kept in the register.

#### **E122. Application of the Contract Procedure Rules to Schools**

- The Schools Fair Funding Scheme (FFS) governs the management by each school of its delegated and devolved budget as determined in s.48 of the School's Standards and Framework Act 1998. Schools (other than foundation schools or academies) are expected to follow these rules but where there is conflict between the rules and the FFS, the FFS will take precedence.

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## **Section F – External Arrangements**

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## **Section F - External Arrangements**

### **Partnerships**

These rules explain what partnership working is in the Council and how it must operate.

#### **F1. Definition**

The term “partnership” covers a wide array of joint working arrangements. For the purposes of this section, the term “partnership” means working with one or more third parties collectively to achieve a shared objective. The partnership arrangements do not apply to:

- Contractual arrangements for the delivery of services to the Council or formal legal ‘partnerships’ as defined by the Partnership Act 1890.
- Contributions made by Members funded from their devolved budgets.
- The Council has in place a number of Shared Service arrangements. These shared services have their own governance arrangements and are therefore outside the scope of this section.

#### **F2. Partnership Strategy**

The Executive will on a periodic basis approve the Council’s Partnership Policy Framework and Toolkit and associated policies.

#### **F3. Management**

Partnership arrangements will be set up and managed in accordance with the Council’s policies together with guidance issued by the Head of Community Engagement and Transformation (Head of Community Engagement).

#### **F4. Written Agreement**

Partnership arrangements must be recorded in writing, the content and format of which must be approved by the Head of Legal and Member Services and Head of Community Engagement. Any partnership involving the commitment of significant Council resources (be they finance, staff, land, buildings or equipment) must have a formal agreement in place approved by the Head of Legal Services.

All significant partnerships (i.e. those considered key to delivering the Sustainable Community Strategy, Local Area Agreement and Corporate Plan priorities or those we need to engage with influence national or sub-national thinking in relation to public service delivery) will be subject to an annual review. As a measure of best practice, all others should be subject to a complete review at least every four years. As a measure of best practice, all partnership agreements should be subject to a complete review at least every 4 years.

## **F5. Legal and Procurement Advice**

Any partnership which involves the creation of or participation in a separate legal entity, such as a limited company, trust or charity, must be approved by the Head of Legal Services and the Head of Procurement.

## **F6. Accountable Body**

Any partnership in which the Council is to act as Accountable/Responsible Body must be approved by the Head of Legal Services. If total project value exceeds £1m, approval of the Head of Service and Head of Finance is required.

Where the Council does act as the Accountable Body, the full cost of this service must be charged to the partnership (including a fair share of corporate overheads).

## **F7. Approval Process**

The approval process for participation in a partnership is based on:

- Compliance with corporate objectives; and
- The financial contribution of the Council.

If the Council's financial contribution (which could be capital, revenue or contributions in kind such as staff time) has not already been included in the approved budget, further approval will be required. The level of approval required will depend on both the amount, and whether the funding is to come from existing budgets or from reserves. These approval limits are set out in section A. The financial contribution of the Council should be assessed over the lifetime of the partnership (assuming a maximum lifespan of 4 years).

Each Chief Officer is responsible for preparing regular reports for the Executive Member outlining the key outcome and achievements of each significant partnership. The report should also review the affordability and continued relevance of the arrangement to the Council's corporate objectives.

## **Grants and External Funding**

### **F8. Definition**

External funds can come from organisations such as Central Government Departments, European Union, National Lottery, Landfill Tax Credit Scheme, Private Sector Companies, Charitable Bodies, Trusts, Foundations and Individuals. For the purposes of this section "external funding activity" means any plans to seek external funding sources for projects or any funding bids being prepared or planned.

## **F9. External Funding Policy**

All External Funding Bids must have secured all resources necessary for a successful project to take place.

### **F10. Bids for More than £1,000**

The following rules apply to all bids for external funding in excess of £1,000 in total.

- Chief Officers must ensure any External Funding activity has a Bid Lead Officer.
- Bid Lead Officers must inform the Head of Neighbourhood and Engagement immediately of External Funding activity, to ensure that all necessary permissions are obtained.
- The Head of Neighbourhood and Engagement will provide the Executive and Management Team with an update on the External Funding position annually.
- Bid Lead Officers must consult the Head of Legal and Democratic Services regarding grant conditions, grant partnership agreements and grant contracts before acceptance of any grants.
- Bid Lead Officers must work with the Head of Neighbourhood and Engagement to undertake bid quality assurance and project risk assessments to identify budget implications, together with information on how the additional running costs/maintenance costs are to be funded. Bid Lead Officers must also consult the Head of Finance regarding the financial implications of the bid, including staffing resources.
- Funding applications will be signed by a Chief Officer.

### **F11. Accountable Body**

- In certain circumstances the Council may wish to act as the accountable body for a partnership bid even where it does not directly incur expenditure on behalf of the project. In these cases the rules as set out in section F6 will apply.
- Where the bid involves international partnerships then the Bid Lead Officer must inform the International Partnership Board.

### **F12. Authority to Submit Bids**

- Authority to submit bids is based on the Council's total financial contribution which may include capital and revenue expenditure and support in kind (including staff time).
- The approval process seeks to obtain approval both to submit the bid, and to incur the expenditure if the bid is successful. This would mean that a separate supplementary revenue or capital estimate would not be required once the bid was accepted (provided that the bid was within acceptable parameters). If the final approved bid is of a significantly different amount or objectives to the original bid, the Bid

Lead Officer should seek advice from the relevant departmental Finance Manager as to whether further Member approval is required.

- For the purposes of this section the term “within existing resources” means that there must be money available within existing service area budgets.
- A Register of all submitted bids will be maintained by the Head of Community Engagement

- **Level One**

For bids with a total financial contribution of **up to £250,000** which are fully funded from existing approved budgets, which includes the Capital matching funding pot, authority to submit these bids is delegated to the Head of Community Engagement and the Bid Lead Officer and the relevant service Director in consultation with the Portfolio Holder.

An Officer Decision Notice will be signed off by the Head of Community Engagement, the Bid Lead Officer and the Head of Service.

- **Level Two**

For bids with a total financial contribution of **over £250,000 and up to £500,000** which are fully funded from existing approved budgets authority to submit these bids is delegated to the Bid Lead Officer, with the approval of the relevant service Director and the Executive Member for Finance and the Port Folio Holder.

An Officer Decision Notice will be signed off by the Head of Community Engagement, the Bid Lead Officer, and the service area Director.

- **Level Three**

Bids that have a total financial contribution of **over £500,000 and up to £1m** which are fully funded from existing approved budgets, must be approved by the Executive. A report must be produced by the Bid Lead Officer in consultation with the Head of Community Engagement.

Any bid with a total financial contribution of over £1m, or that requires funding from general reserves (including the Capital Reserve), regardless of value, must be approved by Council.

### **F13. Authority to Accept Offers of External Funding**

- For all successful bids, a Briefing Note must be produced by the Bid Lead Officer and circulated to all Members.
- Press Release and media coverage must be arranged by the Bid Lead Officer in conjunction with the Head of Community Engagement, to highlight the grant success.

- **Level One**

Grants offered to the Council within the range of **£1,000 - £50,000:-**

In addition to the funding body's grant acceptance procedures, grant acceptance will be authorised and recorded for the Council by



Officer Decision Notice. This will be organised by the Bid Lead Officer. The Officer Decision Notice will be signed by the Bid Lead Officer and Head of Service. Grant terms and conditions must be signed by one authorised signatory as set out in the Scheme of Delegation from within the service or from Legal Services.

- **Level Two**

Grants offered to the Council **over 50,000:-**

In addition to the funding body’s grant acceptance procedures, grant acceptance will be authorised and recorded for the Council by Officer Decision Notice. This will be organised by the Bid Lead Officer. The Officer Decision Notice must be signed by the Head of Community Engagement and the Service area Director. Grant terms and conditions must be signed by one authorised signatory from within Legal Services or sealed by Legal Services.

#### F14. Scheme Summary Table

##### Authority to submit bids

<u>Level</u>	<u>Criteria</u>	<u>Method</u>
1	Up to <b>£50,000</b> match from existing resources	<b>Authority:</b> Head of Community Engagement, Bid Lead Officer and Head of Service <b>Officer Decision Notice:</b> Signed by Head of Community Engagement, Bid Lead Officer and Head of service Entry onto External Funding Register
2	<b>Over £50,000 up to £500,000</b> match from existing resources	<b>Authority:</b> Head of Community Engagement & Bid Lead Officer in consultation with Service area Director <b>Officer Decision Notice:</b> Signed by Head of Community Engagement, Bid Lead Officer, and Service area Director Entry onto External Funding Register
3	Over <b>£500,000</b> and Projects requiring new money for match	<b>Authority:</b> Executive <b>Executive Report:</b> Prepared by – Bid Lead Officer in consultation with Head of Community Engagement Report of – Service Executive Members Entry onto External Funding Register

**Authority to accept offers of external funding**

<u>Level</u>	<u>Criteria</u>	<u>Method</u>
1	Grants between <b>£1,000-£50,000</b>	<p>In addition to the funding body’s grant acceptance procedures, grant acceptance will be authorised and recorded for the Council on an Officer Decision Notice. This will be organised by the Bid Lead Officer.</p> <p>The Officer Decision Notice will be signed by the Head of Community Engagement, Bid Lead Officer and Head of Service.</p> <p>A Briefing Note must be produced by the Bid Lead Officer and circulated to all Members.</p> <p>Press Release and media coverage with the Head of Community Engagement to highlight the grant success.</p> <p>Grant terms and conditions must be signed by one authorised signatory as set out in the Scheme of Delegation from within the service or from Legal Services. The original grant terms and conditions must be sent to Records Management.</p>
2	Grants over <b>£50,000</b> or above	<p>In addition to the funding body’s grant acceptance procedures, grant acceptance will be authorised and recorded for the Council on an Officer Decision Notice. This will be organised by the Bid Lead Officer.</p> <p>The Officer Decision Notice must be signed by the Head of Community Engagement, the Bid Lead Officer and the Service area Director.</p> <p>A Briefing Note must be produced by the Bid Lead Officer and circulated to all Members.</p> <p>Press Release and media coverage must be arranged by the Bid Lead Officer in conjunction with the Head of Community Engagement to highlight the grant success.</p> <p>Grant terms and conditions must be signed by one authorised signatory from within Legal Services or sealed by Legal Services.</p> <p>The original grant terms and conditions must be sent to Legal Services.</p>

**Allocation of Grants, Donations and Other Contributions**

**F15. Policy**

- The Executive will on a periodical basis, agree a policy setting down the approach to be taken to funding of and investment in the voluntary, community and faith sectors and social enterprises

(including the allocation of grants, donations and other contributions to outside bodies).

- The policy will specify the scale, nature and terms of such support, criteria for prioritisation and the process for allocation.
- Funding will be paid by the Council in accordance with the policies set out above, subject to there being adequate provision in service budgets.

## **F16. 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.

## **F17. Grant or Competitive Procurement**

- 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?
- Funding which falls within (a) will be most appropriately dealt with by way of a grant process in accordance with this section of the rules.
- Funding that falls within (b) could be dealt with by either a grant or a competitive procurement process. Officers should seek the advice of the Head of Community Engagement about the Council's approach to funding under such circumstances.
- Funding which falls within (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 Head of Procurement 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.

## **F18. Written Agreement**

All grants, donations or other financial contributions to outside organisations must be set out in a written agreement, the content and format of which must be approved by the Head of Legal and Member Services. The agreement must be signed by the relevant authority set out below;

<b>Value of grant given by the Council</b>	<b>Authorised Signatory</b>
Under £1,000	An authorised signatory as set out in the scheme of delegation from within the service area
£1,000 - £50,000	One authorised signatory as set out in the scheme of delegations from within the services area or from Legal Services The original grant terms and conditions must be sent to Records Management.
£50,000	One Legal Services authorised signatory or sealed by Legal Services The original grant terms and conditions must be sent to

### **F19. Outcomes**

Chief Officers will report on the outcomes achieved through the provision of support to outside organisations on an annual basis to the service Executive Member, with interim reporting on an exception basis or where the sums involved are significant.

### **F20. Budgets**

Budgets devolved to Members will be dealt with in accordance with Council policy.

### **F21. Changing Existing Arrangements**

Before changing existing arrangements with the voluntary, community and faith sector, whether funded by grants or procured competitively, officers should ensure that;

- an Equality Impact Assessment is carried out and the outcome taken into account in decision making;
- a minimum 3 months written notice to withdraw funding is provided to the voluntary, community or faith sector organisation;
- consideration is given as to whether TUPE applies
- guidance issued by the Head of Community Engagement on de-commissioning is followed.