

# Part 4(g) – Contracts Procedure Rules

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# Part 4(g) – Contracts Procedure Rules

## 1. Introduction

The Council is accountable to the public for the way it spends public funds. Professional procurement activities contribute to the efficient, effective and economic delivery of services to the public, maximising the benefits available from the budgets and supporting the Council's strategic objectives. The Council's reputation is of the utmost importance and should be safeguarded from any suggestion of dishonesty, corruption or failure to meet legal obligations.

These Contracts Procedure Rules (CPRs) ensure these accountabilities and objectives are addressed.

## 2. Procurement Thresholds & Exemptions

Procurement covers the total process of purchasing for all bought in services, supplies and works; from the initial assessment of the business need, to acquisition or extension, and contract management.

Total contract value means the estimated/aggregate spend or recurring value payable over the entire contract period including any extensions of contract.

**Section 7.1** provides further details on how to calculate contract value.

### 2.1 Thresholds

The table below sets out the different financial thresholds.

|           | Total Contract Value (excl. VAT)   | Lead Officer        | Procurement Process   | Procurement System  |
|-----------|--|---------------------|---|---|
| Low Value | £1 to £999.99  | Council Officer     | Obtain 1 written or verbal quotation demonstrating best value- where possible this should be a local supplier*  | If appropriate, process Procurement Card transactions in accordance with procedures.<br><br>Otherwise, process as for <b>Minor</b> below                        |
| Minor     | £1,000 to £9,999.99  | Council Officer     | Obtain a minimum of 1 written supplier quote that demonstrates best value- where possible this should be a local supplier*  | Create a requisition in Procure to Pay (P2P), enter a spend justification and attach preferred supplier quote   |
| Medium    | £10,000 to £24,999.99  | Council Officer     | Obtain a minimum of 3 written supplier quotes and evaluate to determine best value- this should include (where possible) as a minimum 2 local suppliers*  | Create a requisition in P2P, enter a spend justification and attach preferred supplier quote  |
| Major     | Threshold (a)<br>£25,000 to £74,999.99<br><br>Threshold (b)<br>£75,000 to £181,302 | Procurement Advisor | Threshold (a) and (b)<br>Contact procurement and seek support to develop specification or tender document, advertise, evaluate and award contract<br>Threshold (b) requires a completed options appraisal, issue a tender, secure approval to award and then complete a signed contract | Contracts Finder / e-Procurement to advertise and award contract.<br><br>Create a requisition in P2P, enter a spend justification and reference contract in P2P |

|               |  |                     |   |  |
|---------------|--|---------------------|---|--|
| OJEU Contract | £181,302 and over unless:<br>(a) social care, health education<br>£615,278 and over<br>(b) works and concession contracts**<br>£4,551,413 and over | Procurement Advisor | Contact procurement and follow EU Procurement Rules for Service, Supplies and Works Contracts | Contracts Finder / e-Procurement and OJEU to advertise and award contract.<br><br>Create a requisition in P2P, enter a spend justification and reference contract in P2P |
|---------------|--|---------------------|---|--|

(\*) The use of Local Suppliers is promoted and encouraged between the Low to Medium Thresholds, but should not supersede the Primary requirement of Council Officers to try and ensure the best possible value for Public Money. Achieving value for Public Money should be reasonably and proportionally measured in terms of Price, Quality and the possible Social Value benefits associated with using Local Businesses.

A Local supplier is defined within Agresso as a Supplier whose address is listed as a Southend postcode, which include SS0, SS1, SS2, SS3 and SS9.

For the avoidance of doubt the Council would like to pro-actively increase the level of money it spends within the Borough. However, it is understood this may not be possible in a number of cases. For this reason any work carried out by Officers in the pursuit of value, but which is not able to secure local quotes will not be subject to delay because of this.

\*\* The purpose of the Concession Regulations 2016 is to provide clear rules to increase competition in the concession market. This is in parallel with the requirement that public procurement should be based upon an organisation fulfilling its legal obligation to obtain best value for money through market competition. In order to maximise the achievable value, all potential Concession Contracts over the £25K value should be competitively let in an open, fair and transparent manner, utilising calls for competition in line with the requirements set out in 2.1 (Thresholds) and 7.2 (Detailed Procurement Process in Relation to Thresholds).

Further detailed information on the Procurement Processes detailed in this table is contained within **section 7.2**.

## 2.2 Exemptions to the CPRs\*

The following types of procurement are exemptions and not covered by these CPRs:

- Grants which the Council may receive or make; except where the grant is the form of payment in a contract for a service, supply or works (or any combination thereof) where the Council requires an output or outcomes to be delivered by a Third Party. The awarding of grants by the Council or on behalf of the Council must be carried out under the principles of openness, fairness, non-discrimination and value for money. Officers cannot choose to treat procurement as a grant in order to avoid conducting a competitive process. The Council's Financial Procedure Rules provide more guidance on the awarding and the receiving of grants
- The purchase or lease of property, land acquisition, interest in land, transaction in land or disposal. This rule does not extend to any service, supplies or works contracts that may be required to make the land, existing buildings or immovable property ready for acquisition, disposal or leasing
- Direct employment of permanent or fixed-term employees. For the avoidance of doubt, these CPRs do apply to consultancy and employment agency contracts
- Contracts for the execution of either mandatory works or provision of goods or services which must be provided by a Statutory Provider other than the Council. This includes but is not limited to public utility companies and other legal authorities
- Contracts which have been procured on the Council's behalf through collaboration with other local authorities or other public bodies. In such instances a competitive process must be followed that complies with the rules / regulations of the lead organisation even though these may not comply wholly with these rules. The use of any third party rules and regulations must be approved

by the Head of Corporate Procurement prior to the commencement of any collaborative procurement. This includes but is not limited to national or regional contracting authorities where the process followed is in line with the Public Contracts Regulations 2006 or 2015 or any other subsequent amendment. Where a collaborative procurement is undertaken, the regulatory requirements of both organisations must be adhered to, e.g. The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 and the Public Contract Regulations 2015

- Instructing barristers or external solicitors and those costs do not exceed £74,999
- Specialist professional services, where the Council's costs are being discharged by a third party and those costs do not exceed £74,999
- Spot care placements which may include special educational needs (i.e. individual placements that fall outside of any block contracting arrangements) are excluded from the requirement but have to be approved through separate approval processes
- The lending or borrowing of money by the Council
- The acquisition or exhibiting of unique works of art or artistic performance where they are only available from a single source and the related costs do not exceed £24,999.99 across the life of the agreement. This exemption does not extend to any medium or long term contract in which a Party would have an exclusive or non-exclusive right to provide the Council with multiple exhibitions or artistic performances over one or more years
- Arrangements with Ofsted for the inspection of a school
- If any law says the Council must contract differently from these CPRs
- For the avoidance of doubt exemptions do not include emergencies; this is covered in Section 8.11.

\*Officers must ensure that any procurement carried out in relation to any of these listed exemptions is consistent with the Council's duty to obtain value for money, as well as the current procurement strategy and other relevant policies of the Council. The Council maintains a list of Exemptions which is reviewed on a regular basis. This can be found at:

<http://seattle/Pages/Payment-with-Purchase-Order.aspx>

Exceptions and Emergencies are detailed in **Sections 8.9, 8.10 and 8.11**

## 2.3 Procurement Oversight

Corporate Procurement will issue quarterly reports to the Corporate Management Team (CMT). This reporting process will ensure there is scrutiny and monitoring of the Council's expenditure in the context of procurement activity (see section 5.6). The Corporate Procurement Team will also report on compliance with the CPRs, delivery of the Procurement Strategy, progress against the Annual Procurement Plan and those Exceptions/Exemptions approvals.

## 3. Purpose of the Contracts Procedure Rules

The purpose of these CPRs is to set out the principles of procurement, roles and responsibilities, rules and processes involved in purchasing services, supplies and works contracts across the Council. They do this to better protect the Council and its Officers from legal challenge, reputational damage and the negative effects of such damage. When using the term contract, this also covers the delivery of pilots and the usage of grants unless they are covered within **section 2.2**.

The CPRs should be read in conjunction with the Council's Financial Procedure Rules, **Part 4(f)**, as well as the Council's Procurement Strategy and Procedures.

In addition, these CPRs reflect the EU Procurement Regulations, The Public Contract Regulations 2015 and UK legislation. Any misuse or failure to comply with any of these CPRs may result in disciplinary action and legal proceedings. It should be noted the term contract also refers to any agreement put in

place which looks to implement the delivery of a Pilot Scheme, as well as the usage of grants (as referenced within Section 2.2 (**Exemptions to the CPRs**))

Any non-compliance shall be reported to the Head of Corporate Procurement, who will decide in conjunction with the relevant Chief Officer what further action needs to be taken.

These CPRs are supported by detailed guidance included within the Council's Procurement Toolkit. The Toolkit explains in more detail procurement and contract management processes, but does not override these CPRs. All procurement activity needs to adhere to the Scheme of Delegation and Financial Limits as set out in the Financial Procedure Rules.

These CPRs will be reviewed by the Head of Corporate Procurement at least every 12 months.

#### 4. Principles of Procurement

The Council's approach to professional procurement, underpinned by its values, is driven by a number of principles that include but are not limited to those set out in table below:

| Principle  | Meaning of the principle  |
|--|---|
| Achieving the best commercial value                    | Using the Council's purchasing power to negotiate and leverage: <ul style="list-style-type: none"> <li>▪ The best commercial price from the marketplace</li> <li>▪ Robust legal terms and conditions</li> <li>▪ Effective, efficient and economic use of resources.</li> </ul>  |
| Complying with Regulatory and Legislative requirements | Ensure the Council is: <ul style="list-style-type: none"> <li>▪ Not exposed to unnecessary risk and likelihood of challenge arising from non-compliant procurement activity</li> <li>▪ Compliance with current legislation, up to date with guidance notes, tools and templates issued by Cabinet Office</li> <li>▪ Open, fair and transparent and fully compliant with EU Procurement Regulations., the Public Contract Regulations 2015 and UK legislation.</li> </ul>  |
| Meeting Government Acts and statutory duties           | Meeting applicable standards and accreditations on: <ul style="list-style-type: none"> <li>▪ Social Value Act 2012 and any subsequent acts (also refer to the Council's Social Value Policy)</li> <li>▪ Acting within the laws of the Bribery Act 2010 and any subsequent acts</li> <li>▪ The Modern Slavery Act (also refer to the Council Modern Slavery statement)</li> <li>▪ Quality and Environmental</li> <li>▪ Security Information Management</li> <li>▪ Freedom of Information, Data Protection (including GDPR 2018) and Transparency Acts</li> <li>▪ Health and Safety.</li> </ul> |
| Promote sustainability                                 | Assessing and monitoring the impact on: <ul style="list-style-type: none"> <li>▪ The environment and any exposure to environmental risks</li> <li>▪ Society such as support for equality and diversity</li> <li>▪ Supporting local Small and Medium Enterprise (SME) supplier markets</li> <li>▪ Ensure that suppliers do not become financially over-dependent on Council contracts</li> <li>▪ To develop and sustain effective supplier and market relationships</li> </ul>   |
| Maintaining ethical standards                          | Operating openly and transparently by: <ul style="list-style-type: none"> <li>▪ Adhering and performing within the Council's code of conduct</li> <li>▪ Notification and recording of any declarations of interest throughout the Procurement process via the Agresso system and relevant project team</li> <li>▪ Acting within the laws of the Equalities Act 2010 and any subsequent acts</li> <li>▪ Ensuring our suppliers allow for equal opportunities</li> <li>▪ Allowing diversity amongst our approved supplier base</li> </ul>   |

|  |  |
|--|--|
|  | <ul style="list-style-type: none"> <li>▪ Ensure that Non-Commercial Considerations do not influence any contracting decision</li> <li>▪ To keep our supplier records relevant and up to date.</li> </ul> |
|--|--|

## 5. Roles and Responsibilities

All Officers must comply with these CPRs, the Council's Constitution, the Public Contract Regulations 2015, EU Procurement Regulations and UK Legislation. Officers must ensure that any Agents or Consultants acting on their behalf also comply.

### 5.1 The Chief Officers shall:

- (a) Agree their annual departmental procurement plans with the Head of Corporate Procurement before the start of each financial year. The plans should accurately detail existing contracts / spend, pending contract renewals and any new contract / spend identified for the coming year
- (b) Appoint Officers in their departments as Designated Procurement Officers who are trained in the administration of purchasing services, supplies and works
- (c) Appoint Officers in their departments as Contract Managers who are trained in contract management and supplier relationship management
- (d) Ensure Procurement Officers and Contract Managers are appropriately trained, supervised, appraised and have access to the necessary systems and understand the importance of following these rules
- (e) Be responsible for approving and delegating approval of contracts / spends in their department, including any variations to contracts where there are financial, legal or commercial implications
- (f) Collaborate with the Head of Corporate Procurement and Audit on an Annual Procurement Plan to ensure compliance within their departments.

### 5.2 Designated Procurement Officers must:

- (a) Appraise purchases, in a manner commensurate with their complexity and value – taking account of guidance in the Procurement Toolkit
- (b) Purchase services, supplies and works in accordance with the CPRs, demonstrate best value and ensure no commitment is made without written authorisation
- (c) Check whether a suitable approved supplier, contract, purchasing or framework agreement already exists before purchasing or letting a contract for services, supplies and works
- (d) Develop a clear and precise set of purchasing requirements, including (but not limited to) written specification / scope, evaluation criteria, drawings, seasonal trends, historical data, benchmark data, timescales and delivery details
- (e) Create purchase requisitions in advance of the supply of services, supplies and works except where a Purchase Card transaction or Payment without a Purchase Order request applies. All purchase requisitions should be under the Council's agreed Terms and Conditions
- (f) Any declaration of interest must be notified immediately to the Head of Corporate Procurement to avoid any conflict when purchasing goods, services and works. This declaration must also be detailed via the Agresso system so that appropriate approval is sought and provided
- (g) Ensure advice is sought where required and/or relevant from the Corporate Procurement Team on the application of these CPRs, Procurement Regulations or tendering procedure

### 5.3 Procurement Advisors shall:

- (a) Provide procurement advice and support to Chief Officers, and other officers on how to purchase services, supplies and works in accordance with these CPRs. This advice includes administering

advertises / frameworks, developing specifications / tenders, conducting evaluation processes, publishing awards and operating procurement systems

- (b) Notify the Head of Corporate Procurement in a timely manner of any anticipated unplanned procurement expenditures in service areas for the forthcoming financial year
- (c) Ensure that procurement requirements are properly defined; procurement activity is competitive, transparent, fair, and complies with the relevant legislation and demonstrates best value
- (d) Support each department to proactively performance manage supplier contracts as part of an agreed contract management plan.
- (e) Maintain and update the public contracts register

#### **5.4 Head of Corporate Procurement shall:**

- (a) Deliver contracts in a manner contributing to the following key objectives: ensuring compliance with EU guidelines, legislation and other procurement policy and regulatory frameworks available to the wider public sector and local authorities and contributing to the achievement of value for money / cashable savings
- (b) Review in accordance with these CPRs exceptions and variations to terms & conditions, in consultation with the Strategic Director (Finance and Resources) and Strategic Director (Legal and Democratic Services) where there are financial and legal implications respectively
- (c) Allocate resource to key procurement projects to ensure delivery of the Annual Procurement Plan
- (d) Ensure Procurement Advisors keep up to date with these CPRs, the Council's Financial Procedure Rules, the Procurement Toolkit, other relevant Guidelines and Procurement Legislation
- (e) Regularly review the CPRs and the Council's Procurement Strategy

#### **5.5 Corporate Procurement Team shall:**

- (a) Provide procurement advice and support to Chief Officers and other officers on how to purchase services, supplies and works in accordance with these CPRs. This advice includes administering adverts / frameworks, developing specifications / tenders, conducting evaluation processes, publishing awards and operating procurement systems
- (b) Monitor compliance and notify the Head of Corporate Procurement in a timely manner of any anticipated exceptions to the CPRs or unplanned procurement expenditures in service areas for the forthcoming financial year
- (c) Resource Major and EU procurement projects to ensure delivery of the Annual Procurement Plan

#### **5.6 Procurement Oversight as detailed in section 2.3 shall:**

- (a) Ensure scrutiny and monitoring of the Council's expenditure in the context of procurement activity
- (b) Monitor compliance against all procurement activity and notably the CPRs
- (c) Provide information as to those exceptions and exemptions requested and approved/rejected
- (d) Monitor progress against the Annual Procurement Plan and the Corporate Procurement Strategy
- (e) Record any unplanned procurement activity reported to it which exceeds £74,999.99 and the course of action taken to address any such unplanned procurement processes (subject to the normal authorities set out in Section 6 below).
- (f) Consider opportunities across departments and service areas where joint initiatives can be investigated and implemented, which in turn may deliver better value

- (g) Provide information and evidence for Internal Audit and the Fraud Team which is contrary to the practices set out in the CPRs

## 6. Approval to Spend

### 6.1 Requirements before commencing any procurement

Before commencing any procurement activity the following approvals to proceed must be in place:

- (a) Contracts that are under £75,000 require approval pursuant to the Delegation Scheme in **Part 3, Schedule 3** of the Constitution and 6.1(e) and 6.2 below, including budgetary approval
- (b) Contracts of £75,000 and above require the authority of Cabinet or of a Chief Officer (pursuant to the Delegations Scheme in **Part 3, Schedule 3** of the Constitution and 6.2 below), including budgetary approval, provided that where the contract has been included in the Annual Procurement Plan then this provides the necessary authority for the Contract
- (c) Contracts within (a) or (b) which are Capital Contracts must be included in the Capital Programme in accordance with the Financial Procedure Rules
- (d) Contracts where external funding is being obtained within (a) or (b) must comply with the External Funding Rules in the Financial Procedure Rules
- (e) Financial levels of authority for Request for Quotation or Invitation to Tender:

| <b>Issue of Request for Quotation or Invitation to Tender (subject to budgetary approval)</b> |   |
|---|---|
| <b>Cabinet / Schools Governing Bodies</b>   | Contract with an estimated value of over £1 million which is not included in the Annual Procurement Plan  |
| <b>The Chief Executive Deputy Chief Executives and Strategic Directors</b>                    | 1. Contract with an estimated value of over £1m already included in the Annual Procurement Plan.<br>2. Contract with an estimated value up to £1 million  |
| <b>Authorised Officers</b>  | Director- contract with an estimated value up to £500k<br>Group Manager- contract with an estimated value up to £75k<br>Business Unit Manager- contract with an estimated value up to £25k<br>Line Manager- contract with an estimated value up to £10k |
| <b>Head Teachers and their Authorised Officers</b>  | In accordance with the delegated powers stipulated by the relevant Board of Governors   |

### 6.2 Award of Contract

Financial levels of authority for Award of Contract:

| <b>Award of Contract (subject to budgetary approval)</b>                   |   |
|--|---|
| <b>Cabinet / Schools Governing Bodies</b>                                  | Contract over £1 million where the tender is in excess of the budget agreed at invitation stage or as stated in the Annual Procurement Plan.<br><br><b>Note:</b> Contracts over £1m must be executed under seal in accordance with Rule 7.3. (b)        |
| <b>The Chief Executive Deputy Chief Executives and Strategic Directors</b> | 1. Contract over £1 million where tender is within the budget agreed at invitation stage and which was included in the Annual Procurement Plan.<br>2. Contract up to £1 million   |
| <b>Authorised Officers</b>   | Director- contract with an estimated value up to £500k<br>Group Manager- contract with an estimated value up to £75k<br>Business Unit Manager- contract with an estimated value up to £25k<br>Line Manager- contract with an estimated value up to £10k |



|  |   |
|--|---|
| <b>Head Teachers and their Authorised Officers</b> | In accordance with the delegated powers stipulated by the relevant Board of Governors |
|--|---|

## 7. Detailed Procurement Rules

To ensure the purpose and principles set out earlier in CPRs are met, the following detailed rules must be adhered to at all times:

### 7.1 Calculating Contract Value

Before entering into any contract; the correct contract value must be calculated in advance. Contract value means the estimated aggregate or recurring value payable in pounds sterling exclusive of Value Added Tax (VAT) over the entire contract period including any extensions of the contract. Where the contract term is without fixed length (e.g. an open approved supplier list) the estimated value of the contract should be calculated by monthly value of spend multiplied by 48 in accordance with regulation 6 of the EU regulations. When calculating the contract value to determine the correct Procurement Threshold, Officers must not underestimate or split the value of a single contract over a number of contracts (Disaggregation) to artificially avoid certain procurement thresholds. The value of a concession is to be calculated on the basis of the total turnover of the concessionaire generated over the duration of the contract, net of VAT, as estimated by the Council, in consideration for the works and services which are the object of the concession as well as for the supplies required for such works and services.

### 7.2 Detailed Procurement Process in Relation to Thresholds

Once the contract value has been calculated, all known or new purchasing contracts are made in accordance with the procurement thresholds and process detailed below, unless an exception has been agreed in advance as detailed in **Sections 8.9 and 8.10**. Officers should seek advice and support from Procurement Advisors to ensure they comply with the CPRs and EU Procurement Rules. The thresholds are summarised in more detail below and apply to known procurements that are contracts due for renewal and new spend agreed within the procurement plan.

| Threshold                                     | Procurement Process  |
|---|--|
| £1 to £999.99                                 | An Officer should obtain one written or a verbal quote from a supplier (this should be a local supplier* wherever possible) who accepts a Procurement Card and complete the card transaction. The audit purposes and for Scrutiny Checks by the Corporate Procurement Team officers should ensure they retain evidence best value has been achieved for the Council even at this level of spend. In circumstances where the Officer does not have a Procurement Card and/or the supplier does not accept a Procurement Card, the Officer should follow the process described in the £1,001 to £9,999.99 threshold below. |
| £1,000 to £9,999.99                           | An Officer should obtain a minimum of one written quote (where possible this should be from a local supplier*) and create a purchase request in P2P and enter a spend justification to evidence that best value has been achieved for the Council. The Officer will also need to attach the preferred supplier quote within the purchase request.  |
| £10,000 to £24,999.99                         | An Officer should obtain a minimum of three written quotes, of which at least two should be from local suppliers*, and create a purchase request in P2P and enter a spend justification to evidence that best value has been achieved for the Council. The Officer will also need to attach the preferred supplier quote within the purchase request.  |
| <b>Threshold (a)</b><br>£25,000 to £74,999.99 | An Officer should contact their nominated Procurement Advisor for advice and support. The Officer will need to develop a specification and evaluation criteria with the Procurement Advisor as it is mandatory within this threshold to formally advertise the procurement contract and publish an award.  |
| <b>Threshold (b)</b>                          | The Procurement Advisor will advise if there are any relevant tendering requirements (normally for spends of £75k and over), if there are any  |

|  |   |
|--|---|
| £75,000 to £181,301.99   | <p>suitable Government Frameworks available to use and the most suitable procurement procedure to follow.</p> <p>Once the procurement process is complete and the award is made, the Officer will be required to create a purchase request in P2P.</p>  |
| £181,302 and over unless:<br>(a) social care, health education £615,278 and over<br>(b) works and concession contracts £4,551,413 and over | <p>An Officer should contact their nominated Procurement Advisor for advice and support. It is mandatory within this threshold to follow EU Procurement Rules for service, supplies and works Contracts. The Procurement Advisor will advise the Officer on the correct process to follow.</p> <p>It should be noted that concession contracts are usually contracts where the Council may partially subsidise or not fund the service at all, but where the operating of the contract relies upon income generation (e.g. the Operation of the Leisure centres). In this case the contract value is based upon the expected income throughout the life of the contract.</p> <p>Once the procurement process is complete and the award is made, the Officer will be required to create a purchase request in P2P.</p> |

(\*) Further information on the responsible use of Local Suppliers is confirmed under **Section 2.1** (Thresholds)

### 7.3 Contract Documentation, Contract Award and Signing, The Contracts Register and Storage of Contracts

#### (a) Documentation

The Council has a standard set of terms and conditions which are included as part of the purchase order requirements sent to suppliers. These terms and conditions are used as part of the procurement process for Minor and Medium sized contracts that do not have complex requirements, and are not to be varied.

Where more complex procurement requirements need tailored or specific terms and conditions (i.e. NEC Framework, performance related incentives, payment terms) usually within tender requirements for Major or EU contracts, written approval must be sought from the Head of Corporate Procurement and / or Strategic Director (Legal and Democratic Services) to vary the Council's terms and conditions. In all cases, irrespective of value, purchase orders and contracts shall clearly specify as a minimum:

- Details of what is to be supplied (i.e. the works, materials, services, deliverables or description of works)
- Payment terms (i.e. the price to be paid and when) this can be a schedule of multiple payments and / or milestone payments
- The dates, or times, within which the contract is to be performed; and the provisions for the Council to terminate the contract.

#### (b) Contract Award and Signing

The necessary Authority for the awarding of a contract is set out in the table below:

| <b>Award of Contract (subject to budgetary approval)</b>                   |   |
|--|---|
| <b>Cabinet / Schools Governing Bodies</b>                                  | <p>Contract over £1 million where the costs provided are in excess of the budget agreed at invitation stage or as stated in the Annual Procurement Plan</p> <p><b>Note:</b> Contracts over £1m must be executed under seal in accordance with Rule 7.3. (b)</p> |
| <b>The Chief Executive Deputy Chief Executives and Strategic Directors</b> | <ol style="list-style-type: none"> <li>1. Contract over £1 million where tender is within the budget agreed at invitation stage or as stated in the Annual Procurement Plan</li> <li>2. Contract up to £1 million.</li> </ol>                                   |
| <b>Authorised Officers</b>   | <p>Director- contract with a value up to £500k<br/>Group Manager- contract with a value up to £75k<br/>Business Unit Manager- contract with a value up to £25k</p>  |

|  |  |
|--|--|
|  | Line Manager- contract with a value up to £10k.  |
| <b>Head Teachers and their Authorised Officers</b> | In accordance with the delegated powers stipulated by the relevant Board of Governors. |

Contracts which have a value below £1m, but for which a longer limitation period is considered necessary to protect the Council's interests (e.g. design contracts, construction contracts) shall be executed under seal as well as all contracts with a value over £1M.

All other Contracts can be signed by the Chief Executive or a Deputy Chief Executive, Strategic Director, Authorised Officer or a Head Teacher subject to the Approved Limits in the table above.

### **(c) The Contracts Register and Storage of Contracts**

The Corporate Procurement Team is responsible for keeping/ensuring:

- A register of all ongoing Council contracts which have been run via the E-Procurement system;
- An electronic copy of all contracts
- The original of all contracts executed under seal shall be passed to the Legal Department for storage in the basement

### **7.4 Signing of Non-disclosure agreements and Letters of Intent (LOI)**

Non-disclosure agreements can only be signed by approved signatories detailed within **7.3 (b)** or by the Head of Corporate Procurement. In addition, it is the Council's policy not to enter into discussions with suppliers based on Letters of Intent (LOI).

### **7.5 Code of Conduct**

All Officers must always comply with the Council's Employee Code of Conduct (**Part 5c**) which means that where their role involves procuring, managing or using the Council's contracts they must comply with the CPRs and Financial Procedure Rules on the award of orders and contracts. In addition, any potential or actual conflicts of interest (financial or non-financial) or relationships that may impact on their involvement in procuring, managing or using the Council's contracts must be declared to the appropriate Council manager. Officers must also not offer, promise, give or receive any gift, loan, fee, reward, regard or advantage from or to contractors or potential contractors in respect of the award or performance of any contract.

Breaches of the Council's Employee Code of Conduct (inside or outside of work) will be investigated and may result in disciplinary action. Serious breaches of the code may be considered gross misconduct and result in dismissal without notice.

### **7.6 Record Keeping Process for Contracts of £75,000 and above**

Procurement Advisors shall record and retain:

- Contracting decisions and reasons (including route to market)
- Any exceptions or exemptions together with the reasons for it
- The Award Criteria
- Tender and Quotation documents sent and received from Tenderers
- Pre-tender market research
- Clarification and post-tender negotiation (incl. minutes)
- Copies of the contract documents (original contracts see **7.3 (c)** )
- Post-contract evaluation and monitoring
- Communications with Tenderers and with the successful contractor throughout the period of the contract.

- Post Award contract documentation such as Variations, Extensions, Reviews, Breaches and performance notices

Full guidance is contained in the Procurement Toolkit.

## 7.7 Record Retention Process for Contracts of £75,000 and above

The Corporate Procurement Team shall retain:

- Successful contract files for twelve (12) years after the end of the contract for all sealed contracts
- Successful contract files for six (6) years after the end of the contract for all other contracts
- Unsuccessful contract files for two (2) years.
- An electronic copy of the contract.

Full guidance is contained within the Procurement Toolkit.

## 8 Procurement Method

All Major and OJEU Contracts within the Council should adhere to the following processes detailed within **Section 8.1**, unless they have been granted an exception under **Section 8.9 and 8.10** or an emergency under **Section 8.11**. Further detailed guidance for each process can be found within the Council's Procurement Toolkit.

### 8.1 Process for Major and OJEU contracts

| Step                              | Process   |
|-----------------------------------|---|
| <b>Pre-Procurement Activities</b> | <ol style="list-style-type: none"> <li><b>1. Market research</b> – Undertake research to identify potential suppliers, estimated contract value and appropriate industry standards or regulations. This may include early supplier engagement through soft market testing, however any activities carried out at this stage should not distort future procurement competition nor prejudice any potential Supplier.</li> <li><b>2. Establish route to market</b> – Identify existing contractual arrangements in form of: <ul style="list-style-type: none"> <li>▪ Framework Agreements that have been set up with a list of pre-assessed Suppliers</li> <li>▪ Pre-Approved supplier list</li> <li>▪ Other approved sources of supply.</li> </ul>           In the absence of the aforementioned, a competitive tender procedure should be selected as defined in the Public Contracts Regulations 2015.         </li> <li><b>3. Defining the requirement</b> – A written document in the form of a specification detailing what services / supplies / works are required, outcomes, technical requirements including designs/drawings and commercial requirements. This also requires defining the evaluation and award criteria required to assess Supplier proposal.</li> <li><b>4. Prepare options appraisal</b> – A descriptive note highlighting the outcome of the Market Research, the preferred route to market and estimated project cost against approved project budget. This document is required for all procurements with an estimated contract value that exceeds £74,999. The Options Appraisal shall be approved by the relevant Deputy Chief Executive, Strategic Director or Director and the Head of Corporate Procurement.</li> </ol> |

|                        |   |
|------------------------|---|
| Procurement Activities | <p><b>5. Advertise</b> – if employing a competitive tender procedure, contract opportunities with an estimated contract value that exceeds £24,999.99 must be made available electronically in the public domain by placing adverts on Contracts Finder. Where the contract value exceeds £181,302, contract opportunities must be advertised electronically in the European Journal prior to placing adverts on Contract Finder.</p> <p><b>6. Manage tender process</b> – All tenders will be managed through the Councils E-Procurement System unless a manual tendering process is approved by the Head of Corporate Procurement. The minimum activities required at this stage are:</p> <ul style="list-style-type: none"> <li>▪ <b>Invitation to tender</b> - Instructions to potential Suppliers on how to respond to an invitation to tender by submitting a proposal for a contract opportunity. This document will include specification, timescales for the tender process and the Terms and Conditions that will govern the eventual contract</li> <li>▪ <b>Tender receipt and opening</b> - Procurement Advisors will open received Supplier proposals in accordance with the tender submission deadline. The opening of Tenders must be completed by Officers who will not be involved in the evaluation process and award of the contract. See detailed instructions in <b>Appendix B</b> of these CPRs</li> <li>▪ <b>Evaluation and moderation</b> - Officers that form part of the evaluation panel must evaluate and score all technical proposals submitted by Suppliers individually. The commercial evaluation can only be carried out by a Procurement Advisor. A moderation meeting coordinated by a Procurement Advisor will be required to record all final consensus scores.</li> </ul> <p><b>7. Contract award</b> – Awarding contracts with a value that exceeds £24,999.99 must be made available electronically in the public domain by placing the Contract Award Notice on Contracts Finder. Where the contract value exceeds £181,302 (or the corresponding OJEU threshold as set out in <b>7.2</b>, the Contract Award Notice must be available electronically in the European Journal prior to placing a notice on Contract Finder.</p> |
|------------------------|---|

All purchases made under the CPRs require a method to instruct and transact with the supplier which is completed by using the Council's Purchase to Pay system (P2P) or Procurement Card Programme (P-Card).

P2P enables Officers to enter their purchasing requirements, manage authorisation, make payments to suppliers and provides a mechanism to report on the Council's expenditure.

## 8.2 Using the Council's Approved Suppliers

All suppliers are entered and maintained within the Council's approved supplier database which is managed jointly between the Corporate Procurement Team and Finance. Prior to entering the suppliers onto the database, they must pass assessment criteria to hold approved supplier status on the Council's database. For the avoidance of doubt the use of Approved Suppliers does not negate the responsibility of Officers to undertake a process to achieve best value. Furthermore, named Contractors operating under the Council's corporate contracts cannot be used to avoid undertaking a process for any requirement not confirmed in the related contract.

## 8.3 Using Dynamic Purchasing Systems (DPS) and Approved Framework Agreements

The Council's Corporate Procurement Team will advertise, tender and award contracts with agreed terms for the Council to use with pre-approved suppliers. These agreements help the Council control its costs and operate with third parties using a robust set of terms and conditions. In addition, the Corporate Procurement Team also has access to Framework Agreements that have been established by other Public Sector Bodies and are accessible to the Council, subject to the terms of the Framework Agreement.

Officers should seek advice from their nominated Procurement Advisor to ascertain if approved suppliers and framework agreements exist for their requirements before entering into a contract.

The Council through their Electronic Procurement System also have access to a Dynamic Purchasing System. This allows the Council to operate an open ended approved supplier list which is available for new suppliers to join on an ongoing basis.

## 8.4 Create Purchase Requisitions and issuing of Council Purchase Orders

With the exception of a Payment Without Purchase Order (PWPO) request and Procurement Card transactions, all purchasing requirements must be accompanied by an official purchase order which includes the Council's agreed terms and conditions.

An Officer is required to create a purchase requisition in advance of the supply of services, supplies or works which will issue a purchase order to a supplier once approved under the scheme of delegation. Under no circumstances should purchase requisitions be raised retrospectively to cover any invoiced services, supplies or works. If however special circumstances apply then a PWPO form would need to be attached to any retrospective order raised on Agresso.

### 8.5 Confirm Services, Supplies or Works have been received

An Officer is responsible for accepting the services, supplies or works received from the supplier; and ensuring it meets the standards set in the purchase order or contract.

### 8.6 Payment without Purchase Order (PWPO)

In certain circumstances, there are payments to suppliers or third parties, where it would not be practical to raise a purchase requisition in advance of supplying services, supplies or works. For these exceptions, a Payment without Purchase Order form should be completed. These circumstances where a PWPO applies are listed at:

<http://seattle/Pages/Payment-with-Purchase-Order.aspx>

### 8.7 Procurement Card Programme (P-Card)

P-Cards are used to procure one off, low cost services and supplies, saving Officers both time spent on ordering and speeding up the delivery of your goods and services. The Card eliminates the need to set up suppliers, enter purchase requests and handle invoices multiple times across the organisation. P-Cards must not be used to circumvent the CPRs in anyway.

### 8.8 Segregation of duties in P2P:

The principal roles included in the procurement process are set out in the table below, along with their responsibilities. Whilst activities may be delegated, the person in each role remains accountable for compliance with this policy.

| Role                | Responsibility   | Comments  |
|---------------------|--|---|
| Originating Officer | The Originator is the nominated contact who understands the business and / or technical need and can develop the technical specification or statement of work          |   |
| Requesting Officer  | The Requester enters the purchase requirement in the P2P system, attaching requirements and justifications where appropriate   | The Requester and Originator can be the same person   |
| Receiving Officer   | The Receiver is responsible for accepting the goods and / or services received from the supplier; checking that it meets the standards set in the original requirement | The Receiver can be the same person as the Originator   |
| Procurement Advisor | The role of the Procurement Advisor is to control the companies spend by negotiating and agreeing purchasing agreements with robust legal and commercial terms         | The Procurement Advisor cannot be a Requester and Receiver of goods and / or services or authoriser       |
| Authoriser Officer  | The Authoriser is accountable for approving purchases made in accordance with <b>Section 7.3 (b)</b>   | The Authoriser must not authorise where they are the Originator or Requester of the goods and/or services |

## 8.9 Exceptions to the Contracts Procedure Rules

In certain circumstances, an Officer may require an exception to one or more of the CPRs in order to award a contract. Exceptions are reserved for exceptional circumstances and can only be granted where good reasons can be sufficiently evidenced. Lack of planning or convenience will not be acceptable as grounds for requesting an exception to the rules (As stated in the Public Contract Regulations 2015). Before any exception is sought the requesting Officer must ensure the budget allocation for the exception is in place should the exception be granted. Exceptions can also be granted in relation to the tendering of Concession Contracts up to the relative OJEU Threshold.

## 8.10 Exception Request Approval Process for each Procurement Threshold

|           | Total Contract Value (excl. VAT)   | Exception Approval Process   |
|-----------|--|--|
| Low       | £1 to £9,999.99  | Not required as long as best value is ascertained.   |
| Medium    | £10,000 to £24,999.99  | Officers must complete a Tender/Procedural Exception Request Form and submit to the Head of Corporate Procurement for approval   |
| Major (a) | Threshold (a)<br>£25,000 to £74,999.99   | Officers must complete a Tender/Procedural Exception Request Form and submit to the Head of Corporate Procurement and their Strategic Director or Director for approval  |
| Major (b) | Threshold (b)<br>£75,000 to 181,301.99<br>(or £615,278 or<br>£4,551,413 for those<br>contracts detailed below)                                 | Officers must complete a Tender/Procedural Exception Request Form and submit to both their Strategic Director or Director and the Head of Corporate Procurement for approval. Please see Appendices A and B for further details. |
| OJEU      | £181,302 and over unless:<br>(a) social care, health and education £615,278 and over<br>(b) works and concession contracts £4,551,413 and over | Officers must seek cabinet approval. [Note it is not lawful to avoid compliance with the UK Public Contract Regulations 2015 - advice must be obtained from the Head of Corporate Procurement]                                   |

Any Exception request made against any of the CPRs must be sought in advance of any contractual agreement. Exception requests cannot be made or granted retrospectively.

An Exception relating to the publishing of an advert for any Contract Opportunity over £25,000 (as detailed in EU Procurement Regulations) will only normally be permitted in relation to the areas of procurement detailed in **Exemptions Section 2.2**.

It is not lawful for Officers or Councillors to avoid compliance with The Public Contracts Regulations 2015 or the Concession Contracts Regulations 2016. Therefore, approval of any Exception Requests equal to or over the relevant OJEU Threshold is not permitted without advice being obtained from the Head of Corporate Procurement and before seeking to apply any such exceptions.

All Exception requests to these Rules will be reported to the Corporate Management Team (CMT) on a quarterly basis.

Note: CMT is not involved in approval of exceptions, but will undertake a strategic role in scrutinising and monitoring procurement activity. Where the Corporate Procurement Team believe it to be prudent; an exception will be referred to Internal Audit for further action.

See **Appendix A** for further details on the exceptions request process

## 8.11 Emergencies

In the case of unforeseeable emergencies which represent or without action would result in:

- Immediate danger to life or health
- Serious damage to property
- Any other circumstance where the consequences of which would be equal to or greater than those above.

Services, supplies and works can be procured by Designated Officers in such emergencies where the Total Contract Value is below £75,000. The emergency circumstances must require the Council to respond immediately to events which are beyond the genuine control of the Council. This includes but is not limited to natural or manmade disasters such as flooding, fires, or civil unrest. Any Emergency procurement must be reported to the Head of Corporate Procurement, by the Officer who put in place the emergency procurement as soon as practically possible and within 72 hours.

Any such Contract entered into on this emergency basis by the Council must not be for a term of more than 4 weeks: during which time the Council must approve any further contracts required on an urgent basis via the Tender Exception Request if required.

Please note that the CPRs allow for both “immediate” and “urgent” action to be taken by the Council under separate and differing circumstances and approvals. The immediate action permissible under an emergency situation by designated Officers of the Council is detailed above. The “urgent” action is addressed under the **Exception Process 8.9 (Exceptions to the Contracts Procedure Rules)**.

**Section 8.11** constitutes the same means for Emergency and Urgent Expenditure (SO46) as detailed in the Financial Procedure Rules.

## 9 Contract Management

For a contract classified as a Major Contract or an OJEU Contract within **Section 10**, the Chief Executive, Deputy Chief Executives, Strategic Directors, Directors and Procurement Advisors must ensure during the life of the contract that the Council’s approved processes for contract management are adhered to as set out below:-

### 9.1 Definition and Scope of Contract Management Activities within the Council

Contract management is the active management of the relationship between the Council and a Supplier over the term of the contract for the provision of services, supplies and works to a set of agreed standards. Contract management should also be proportionate to the value, duration, risk and complexity of the contract. Simple purchase contracts (i.e. an item of office furniture) will usually only require inspection on receipt and payment of the invoice whilst for complex or high value contracts it may be necessary to appoint a full-time Contract Manager or team and develop a contract management plan.

The following are the Council’s key Contract Management principles and are also set out within the Corporate Contract Management Framework as developed by Corporate Procurement:

| Principle                                      | Meaning of the Principle   |
|--|--|
| Proportionate                                  | Invest more time and resource to high value, high risk and complex contracts than low value, low risk and low complexity contracts.  |
| Ensure the Council is getting what it pays for | Understand fully the specification, the contract terms and conditions, changes via clarifications and the promises made by the contractor in their tender submission.                                |
| Continuous Improvement and Risk reduction      | Robust contract management plans ensure that risks are evaluated and mitigated, that performance and customer feedback is sought. Resulting action plans are then agreed, monitored and implemented. |
| Resolution of poor performance and disputes    | Problems are tackled at the earliest opportunity in a collaborative way but utilising the agreed terms and conditions as set out in the contract.  |



|   |  |
|---|--|
| Contractual changes, variations and extensions are documented | All contractual changes are within the law, are documented, signed in line with the contract terms and conditions and are stored securely.               |
| Strong supplier relationships                                 | Relationships are peer-to-peer and therefore deliver a win-win position. This ensures best value, innovation and long-term investment from both parties. |
| Exit planning   | Asset registers are maintained, intellectual property rights considered, accounts are reconciled and loans/performance bonds/guarantees are finalised.   |
| Future planning   | Post-contract reports are compiled so as to document the lessons learnt which can be implemented in future tenders.                                      |

In particular, the contract management procedures ensure contract compliance, performance management, continuous improvement and value for money is achieved.

**The Chief Officers shall ensure:**

- They identify where contracts within their departments / service areas require contract management activities and assign Contract Managers to them for the duration of their contract life
- Develop job descriptions, set annual performance objectives and identify training requirements for their Contract Managers
- Their contract managers are aware and follow the procedures set out in the CPRs and the Procurement Toolkit
- Agree with the Head of Corporate Procurement and Head of Internal Audit a proactive plan to review performance.

**Each Contract Manager will:**

- Manage the contract and ensure day to day activities are carried out in accordance with its terms and conditions
- Monitor the supplier's performance (in accordance with performance indicators and service level agreements)
- Make the contractor aware what Council policies they are expected to comply with
- Undertake appropriate risk assessments and maintain up to date risk registers throughout the duration of the contract period (This should be aligned to the Corporate Risk Policy)
- Agree any minor changes to the contract (excluding terms, conditions or pricing) via a change request procedure and notify their Procurement Advisor
- Liaise with their assigned procurement advisor when considering any proposed variations or extensions to a contract
- Identify, escalate and manage any non-conformance with suppliers
- Keep a record of all valuations, payments, claims, monitoring, changes and certificates under the contract
- Set up regular contract meetings with suppliers to review performance and compliance against the contract.

**Procurement Advisors will, in collaboration with the Contract Manager(s):**

- Attend contract meetings with suppliers to review performance and compliance against the contract

- Assist in managing any contractual issues raised by either the contract manager or supplier
- Assist in managing any non-conformance identified by the contract manager or supplier
- Review any proposed contract variations and/or extensions
- Ensure that key contract documentation is retained on file as set out in section 7.6

## 9.2 Variations to Contract

Where a contract allows for variations through its clauses or in instances where a contract has no formal variation process; the Council and the Supplier can mutually agree variations in writing. Officers should consult with their nominated Procurement Advisor to make the necessary variations to the contract – subject to 9.3 and compliance with the Financial Procedure Rules. Any contract which was let with a value above its respective OJEU Threshold must only be varied / modified in accordance of The Public Contracts Regulations 2015 Clause 72 (Modification of contracts during their term).

## 9.3 Approval of Variations by Chief Officers

| Total Contract Value (excl. VAT) | Variation Approval Process  |
|----------------------------------|---|
| Up to £100,000                   | Chief Officers in consultation with the Head of Corporate Procurement   |
| Over £100,000                    | Chief Officers in consultation with the Head of Corporate Procurement and the relevant Cabinet Member (such consultation being recorded in writing using the S.O. 46 procedure) |

## 9.4 The Contract Manager for the Council must ensure the following for each contract which is varied:

- Any variation is only agreed after budget approval has been granted
- Any variation agreed is demonstrably in the best interests of the Council
- Any variation does not bring about a material change to the scope of the Contract
- Both the individual cost of a variation and its cumulative cost when added to the total cost of all other variations (on the same contract) must be less than 50% of the original contract value (this is in line with the Public Contract Regulations 2015, Regulation 72)
- Both the individual cost of a variation and its cumulative cost when added to the total cost of all other variations (on the same contract) must not exceed the relevant OJEU threshold for the original contract. To ensure that variations are within the CPR parameters all contract managers must work in partnership with the relevant procurement advisor to conclude any contract variation.

## 9.5 Extensions to Contracts

Where the contract clauses allow for an extension to contract, the Council and the Supplier can mutually agree such extensions. Officers must consult with their nominated Procurement Advisor to make the necessary Extensions to a contract where the contract extension:

- has received budgetary approval
- does not vary the scope of the original contract
- Is of commercial benefit to the Council.

For contracts that do not have any clauses to extend the contract, Officers should request an Exception as part of the Exceptions to the CPRs.

Under no circumstances must the contract extension period be longer in duration than the original contract period.

**9.6 Approval of Extensions to Contracts**

| <b>Approval of Contract Extensions (where Contract clauses allow for an extension)</b> |   |
|--|---|
| <b>The Chief Executive<br/>Deputy Chief Executives<br/>or Strategic Director</b>       | Contract with a value over £500k  |
| <b>Authorised Officers</b>   | Director- contract with a value up to £500k<br>Group Manager- contract with a value up to £75k<br>Business Unit Manager- contract with a value up to £25k<br>Line Manager- contract with a value up to £10k |
| <b>Head Teachers and their<br/>Authorised Officers</b>                                 | In accordance with the delegated powers stipulated by the relevant Board of Governors   |

## 10 Glossary of Terms

For the purpose of these Rules the following terms have the meanings as set out below:

| Term                             | Meaning of Term   |
|----------------------------------|---|
| Annual Procurement Plan          | The Annual Procurement Plan which sets out the approach to the procurement of contracts that exceed a lifetime value of £74,999.99.   |
| Approved Suppliers               | Suppliers who are on the Council's approved supplier database which is managed jointly between the Corporate Procurement Team and Finance. Prior to entering the suppliers onto the database, they must pass assessment criteria.   |
| Authorised Officer               | P2P role- the Authorised officer is accountable for approving purchases made in accordance with the Council's scheme of delegation.   |
| Capital                          | Capital expenditure involves acquiring or enhancing fixed assets with a long-term value to the authority, such as land, buildings, and major items of plant, equipment or vehicles.   |
| Capital Programme                | The programme of Capital expenditure agreed by Cabinet.   |
| Chief Officer                    | The Chief Executive, a Deputy Chief Executive a Strategic Director, or Director   |
| CIPS                             | Chartered Institute of Purchasing and Supply.   |
| Corporate Risk Policy            | Corporate Approach to Risk Management – the Risk Management tool kit is available on the Intranet <a href="http://seattle/Pages/Compliance.aspx">http://seattle/Pages/Compliance.aspx</a> .   |
| Concession contracts             | A <b>concession agreement</b> is a negotiated <b>contract</b> between a company and a local authority that gives the company the right to operate a specific business within the Council's jurisdiction, subject to certain conditions. This often differs from other Council contracts in the fact that the Council may not provide revenue funding and so the levels of risk in relation to the investment of a company is substantially greater and manages the service through the income generated. These contracts allow for negotiations and as such use of the competitive procedure with negotiation will allow business areas to formally evaluate bids, select the successful bidder following an open, fair and transparent procedure and then allow negotiation with the successful bidder before any contract is formally signed. |
| Contracts Finder                 | Online government database detailing procurement opportunities in the Public Sector.  |
| Contract Management              | Contract management is the active management of the relationship between the Council and the Supplier over the term of the contract for the provision of services, supplies and works to a set of agreed standards.   |
| Contract Managers                | Manage the contract and ensure day to day activities are carried out in accordance with its terms and conditions. Full duties are detailed in <b>Section 9</b> of the CPRs.   |
| Contracts Procedure Rules (CPRs) | This document setting out the principles of procurement, roles and responsibilities, contract procedure rules and processes involved in purchasing services, supplies and works contracts   |
| Contract Register                | A register of Council contracts that exceed £74,999 held by the Corporate Procurement Team and published on the Council's e-Procurement system.   |
| Contract Value                   | The estimated total monetary value of a contract over its full duration. (N.B. not the annual value.) Where the duration of a contract is indeterminate, this will be taken to be the estimated value of the contract over a period of four years.  |

|                                  |   |
|----------------------------------|---|
| Council                          | Southend-on-Sea Borough Council.  |
| Councillor                       | An elected Member of the Council  |
| Corporate Procurement Team (CPT) | Central team responsible to managing corporate procurements, maintaining procurement standards and controls, and providing advice and guidance to directorates and designated procurement advisors.             |
| Data Protection Act              | Data Protection Act controls how personal information is used by organisations, businesses or the government.   |
| Designated Procurement Advisors  | Officers appointed by Chief Officers in consultation with the Head of Corporate Procurement to undertake procurement activities in accordance with the CPR.   |
| Designated Procurement Officers  | These are officers within service areas across the Council that manage and oversee contracts and would liaise with the Corporate Procurement Team when re-tendering or procuring new contracts                  |
| Dynamic Purchasing System (DPS)  | A completely electronic <b>system</b> used by a Contracting Authority (buyer) to purchase commonly used goods, works or services. Unlike a traditional framework, suppliers can apply to join at any time       |
| e-Procurement                    | A system for the end to end tendering process, both suppliers and buyers submit and respond to tenders electronically removing the need for paper submissions.  |
| Equalities Act                   | Protects individuals from various forms of discrimination and harassment relating to disability, age, gender, religion / belief and sexuality.  |
| EU Procurement Regulations       | EU Procurement Rules that apply to public authorities as defined by the UK Public Contracts Regulations 2015  |
| Freedom of Information Act       | Freedom of Information Act 2000 is an act defining the ways in which the public may obtain access to government-held information.   |
| Framework Agreement              | An agreement with suppliers which sets out terms and conditions under which specific purchases can be made throughout the term of the agreement and which has been tendered in accordance with EC directives    |
| Lead Role                        | Is accountable for ensuring they follow the procurement process as stated in the Contract Procedure Rules. Section 2.0 page 3   |
| Low Value                        | Total Contract Value (excluding VAT) £1 to £999.99  |
| Major Contract Threshold (a)     | Total Contract Value (excluding VAT) £25,000 to £74,999.99  |
| Major Contract Threshold (b)     | Total Contract Value (excluding VAT) £75,000 to £181,301.99   |
| MEAT                             | Most Economically Advantageous Tender – evaluated on the basis of quality and price – normally encompassing whole life costs  |
| Medium Contract                  | Total Contract Value (excluding VAT) £10,000 to £24,999   |
| Minor Contract                   | Total Contract Value (excluding VAT) £1,000 to £9,999.99  |
| OJEU Contract                    | All Contracts Value (excluding VAT) of £181,302 and over except:<br>(a) Social Care, Health and Education where value is £615,278 and over<br>(b) Works/Concession contracts where value is £4,551,413 and over |
| Originating Officer              | P2P role the Originator is the nominated contact who understands the business and/or technical need and can develop the technical specification or statement of work  |

|                                     |  |
|-------------------------------------|--|
| Payment without Purchase Order form | Authorisation form for agreement for procurement without the prior need to raise a purchase order (available on the intranet under procurement pages)  |
| Pilot contract                      | This is a short-term contract which is put into place to market test a potential longer-term service provision. Pilot contracts still need to be procured in line with the CPR thresholds and the PCR 2015 regulations |
| Procurement Card                    | Corporate Credit Card used for low value procurements  |
| Procurement Thresholds              | Controls and process required to undertake a procurement, defined by the value of spend (whole life cost)  |
| Procurement Toolkit                 | Procedural guide detailing the application of these rules  |
| Purchase to Pay (P2P)               | A system to enter purchasing requirements, manage authorisation, confirm receipt of goods and make payments to suppliers   |
| Receiving Officer                   | P2P Role receiver is responsible for accepting the goods and/or services received from the supplier; checking that it meets the standards set in the original requirement  |
| Requesting Officer                  | P2P Role requester enters the purchase requirement in the P2P system, attaching requirements and justifications where appropriate  |
| SME                                 | Small to Medium Enterprise – fewer than 250 employees; and annual turnover not exceeding approximately £50 million   |
| SO46                                | Standing Order within Part 4 (a) of the Constitution detailing the process for urgent action   |
| Social Value Act                    | Act places a requirement on procurers to consider the economic, environmental and social benefits. Please refer to the Corporate Social Value policy and toolkit   |
| Soft Market Testing                 | Analysis of the market prior to formal tender  |
| Suppliers                           | Contractors supplying goods, services or works to the Council  |
| Sustainable Procurement Policy      | The corporate policy emphasises the importance of socially responsible procurement, assessing whole life costs and social, environmental and economic impact.  |

## Exceptions from Tendering Requirements in the Contracts Procedure Rules (CPRs) (sections 8.9 and 8.10)

The following exceptions from tendering requirements may be applied following the prior approval Tender Exception Request Form.

The Exceptions from having to Tender are:

1. For the purchase of supplies, works or services which is prevented by Legislation.
2. If the supply of goods or materials to be acquired constitutes an extension of an existing supply contract. The extension can only be granted if all the following criteria are met:
  - The increase to the quantity of goods and materials was not envisaged at the time the original contract was awarded.
  - The extension is based upon comparable terms and conditions as the original contract.
  - The extension has a value less than 50% total value than the original contract requirement.
  - The extension does not breach the threshold of the EU Regulations.
3. For the execution of works or provision of services where the proposed contract outlined in the Exception Request is required due to unforeseen technical or economic reasons and is directly linked to the continuation and success of an existing contract. The existing contract itself must have been awarded competitively in accordance with the CPRs:
  - If the proposed contract is to be undertaken by the Contractor named in the existing contract, terms of the proposed contract must be negotiated on the basis of the rates and prices contained in the existing contract; or
  - If a new Contractor has been sought then the Exception Request must be accompanied with evidence outlining the steps taken to ensure best value for the Council.

This Exception does not cover works and services carried out under annual contracts or values for proposed contracts that are greater than the relevant EU Threshold.

4. Where it is considered the execution of works or the supply of either goods or services is required so urgently so as not to permit the invitation of tenders. Any request for an exception under this clause must be based upon circumstances which could not have been reasonably foreseen. Exceptions cannot be granted under this clause where a lack of foresight has given rise to difficulties.
5. In circumstances where a contract does not contain an option for an extension: but where an extension is required to facilitate a full and compliant tender exercise for operational reasons. An extension can only be granted under this clause if:
  - The initial contract itself was awarded as part of a competitive procurement process under the CPRs
  - The terms under which the extension is agreed must be equal to the existing contract in relation to the Scope, the Pricing and the Terms and Conditions

The actual length of any extension granted under this clause is at the discretion of the Head of Corporate Procurement: but cannot be more than 12 months in duration and cannot be longer than the initial contract itself. Only in circumstances where delays in publicised changes to legislation would make procurement impractical can multiple extensions be granted in relation to a single contract. In all other cases this exception may only be used once per contract.

## Tender Opening Procedures

### 1 Opening of Tenders received via E-Procurement

Where the Council uses an electronic tendering system that releases submissions for opening at a predetermined date and time then pre-qualification questionnaires (PQQ or equivalent) and tenders submitted through that system may be accessed and opened by a member of the Corporate Procurement Team through that system.

Where a member of the Corporate Procurement Team is authorised to release any of the documents detailed above that officer must not have been a part of the project team charged with the delivery of that procurement or any part thereof.

For the avoidance of doubt: PQQ and Tender Documents, as well as all other supporting information must not be opened before the stipulated deadline for submission has passed. This is the case both for submissions received by the Council via any e-procurement system and any received in hard copy.

### 2 Opening of Tenders received in hard copy

#### 2.1 Outline of Responsibilities

No officer involved in any way with the drawing up of the specification and the tender documents may participate in the receipt of the tender, in its custody pending opening or in the tender opening process.

All tenders shall be returned to the Customer Service Centre on the Ground Floor of the Civic Centre or the Post Room of the Civic Centre where they will be receipted and annotated with the date and time of receipt by the staff at either location, who will then contact the correct team to organise collection. The individual within the Corporate Procurement Team charged with collection of the Tenders must ensure that all items to be collected are stamped and the time of delivery clearly marked.

All Tenders should:

- Bear the corporate reply label or addressed to Southend-on-Sea Borough Council Customer Services Centre;
- Be sealed and marked "Tender";
- Be annotated with the subject to which the tender relates; and
- Not indicate the identity of the sender.

#### 2.2 Opening of Hard Copy Tenders

Tenders must be opened in a secure and confidential environment, with openers being undistracted.

Forms used as tender opening records must be prescribed or approved by a Senior Procurement Advisor.

Each of the following must be stamped and initialled by both designated openers:

- Any cover letter bearing a signature
- Any other page bearing a signature that is not certification of any kind pertaining to insurance, quality assurance, health and safety and so on
- Any page bearing a cost that may be applied to the resulting contract(s)
- All Tender Forms including Contract Variation, Bona fide Tender, Tender Form and Freedom of Information.

Date stamping and initialling priced pages of tender documents is an important authentication if correction of errors is to be admitted according to Council's Financial Procedure Rules.



The opening of tenders and recording of their details shall be subject to the following regulations:

- They must not be opened before the deadline for submission stipulated in the tender documents;
- They must be opened at one time by not less than two persons (one of whom would be from the Corporate Procurement Team) designated for the purpose by the appropriate Chief Officer;
- No Officer or Councillor of the Council may be present at the opening of tenders if they have a material interest in relation to the subject or result of the tender. Factors that can be suggestive of a material interest and would preclude attendance at a tender opening include, but are not limited to a connection to a possible tenderer through family, friends or other business associates.

Additionally any corrective amendments by tenderers to their tender prices must be initialled by both designated openers and annotated in the tender opening record.

### **3 Late Tenders (either Electronic or Hardcopy Tenders)**

Any tender received by the Council after the relevant deadline for submission has passed will not be evaluated by the Council. For the avoidance of doubt: once the deadline has passed, any tender delivered later than the deadline (regardless of its proximity to the deadline) must not be included in the evaluation process.

Only in instances where due to unforeseen circumstances a pre confirmed extension to a deadline has been made available to all Tenderers, can submissions be accepted after the deadline stipulated in the tender documents. Any such extension cannot be granted for the benefit of a single tenderer. The granted extension must be fully justifiable and meet the full challenge of any audit of the process. The closer to the deadline that an extension is granted the stronger the justification will be required to be. Any revised deadline stipulated as part of an agreed extension will itself be subject to the same level of finality detailed in the paragraph above and any tender received by the Council after the revised deadline for submission has passed will not be evaluated by the Council.

The entire process of opening late tenders is detailed in the Procurement Toolkit. However, late tenders must not be opened before electronic, scanned or photographic evidence confirming their lateness has been forwarded to the Head of Corporate Procurement. Only after the written approval to open the late tender has been provided by the Head of Corporate Procurement can that tender be opened by a Procurement Advisor with no connection to the Tender Process in question. The opening of any Late Tender (Hardcopy) must be documented using a Late Tender Form. Both evidence of approval to open a late tender and the accompanying Late Tender Form must be saved in the corresponding Tender Project File.

### **4 Alterations / Corrections to either Electronic or Hardcopy Tenders**

The Tenderer may not amend or request amendment to their tender after the date and time fixed for the receipt of tenders.

However, if the Council encounters an error in a tender consisting of incomplete or incorrect information then the Council may at its discretion request the Tenderer concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit, provided that such requests are made in full compliance with the principles of equal treatment and transparency.

In determining whether such an error has been made in relation to a received tender submission Council Officers must assess this in direct relation to the information contained in that submission or to the tender documentation issued by the Council. The error relating to the specific tender must be clear, self-evident and obvious. Under no circumstances will an issue shown up as a result of cross referencing against any other tender submission be accepted as such an error.

All action undertaken in relation to seeking alteration or correction information must be based on an unbiased and objective assessment of the entire tender process it is being applied to. The action itself must be taken in a manner that treats all participating tenderers fairly. Any communication issued in relation to the action must ensure the validity and effectiveness of the procurement.

Key factors in assessing if alteration or correction information will be sought in relation to an error accepted by the Council will include but not be limited to:

- Number of Tenders returned in relation to the project

- If any of the other Tenderers made the same error
- If other Tenderers did make the same error what proportion of the overall returns does this represent
- Clarity of the information issued by the Council
- If the error is a complete omission of required information
- Is it possible to request clarification on an issue from all of the competing Tenderers involved without unfairly disadvantaging any of those Tenderers
- Is the justification relating to the clarifying of an issue by all Tenderers in the process able to withstand audit scrutiny, challenge by a Tenderer and lead to a more robust evaluation
- The strict time period in which the Tenderer will be required to respond

Subjective information including the identity of the company or stakeholder preference must not be used as a basis to seek alteration or correction information.

Under no circumstance must any Council Officer use this clause to unfairly assist a tenderer to gain a more favourable tender score at the expense of the other competing tenderers or the Council's good reputation.

Corporate Procurement must maintain a record / audit trail of any action taken and justification for that action taken in relation to errors found in any tender.

## **5 Training**

It is the responsibility of the appropriate Chief Officer of each department or establishment involved in the tendering process to ensure that all relevant members of staff are trained in the correct procedures, and issued with the Contract Procedure Rules and the Tender Opening Procedure guidance available.

The Corporate Procurement Team will support Council officers by providing training, advice, and any necessary templates to enable them to understand and adhere to the CPRs and tender effectively.